



**Divas Beverages Holdings Ltd  
(Administrators Appointed)  
ACN 162 482 680  
ABN 32 162 482 680 (“the Company”)**

## **Administrators’ Report to creditors**

Pursuant to Section 439A of the Corporations Act 2001 and  
75-225 of the Insolvency Practice Rules

5 December 2022

## Contents

1. EXECUTIVE SUMMARY.....	4
2. INTRODUCTION.....	6
3. DISCLAIMER AND INDEPENDENCE .....	7
4. STATUTORY INFORMATION .....	8
5. OVERVIEW OF THE COMPANY .....	10
6. HISTORICAL FINANCIAL RESULTS .....	11
7. REPORT ON COMPANY ACTIVITIES & PROPERTY (“ROCAP”).....	16
8. DEED OF COMPANY ARRANGEMENT .....	17
9. ESTIMATED RETURN TO CREDITORS IN A DOCA AND LIQUIDATION .....	18
10. RECOVERIES, OFFENCES, VOIDABLE TRANSACTIONS & INSOLVENT TRADING.....	21
11. ADMINISTRATORS’ OPINION .....	28
12. SECOND MEETING OF CREDITORS .....	28
13. CONDUCT OF THE ADMINISTRATION .....	29
14. REMUNERATION .....	30

## ANNEXURE

A	Statement of Administrators’ Opinion
B	Notice of Meeting, proxy form and proof of debt Form
C	Deed Proposal
D	ASIC Publication: “Insolvency Information for directors, Employees, creditors & shareholders”
E	Creditor Information Sheet: Offences, Recoverable Transactions & Insolvent Trading
F	Remuneration Report

## ABBREVIATIONS

Act	Corporations Act 2001
Accountant	Leading Solutions Pty Ltd
Administrators	Brendan Copeland and Christian Sprowles
ALLPAP	All present and after acquired property
ARITA	Australian Restructuring Insolvency and Turnaround Association
ASIC	the Australian Securities & Investments Commission
ATO	Australian Taxation Office
BAS	Business Activity Statement
Company	Divas Beverages Holdings Ltd (Administrators Appointed)
CSP	Concessional Spirit Permit
DBA	Divas Beverages Australia Limited
DBH	Divas Beverages Holding Ltd
DBW	Divas Beverages(Wholesale) Pty Ltd
Deed Proponent	Divas Beverages Australia Limited and Jae Jung
Directors	Jae Jang and Gu Ja Jang
DoCA	Deed of Company Arrangement
EBITDA	Earnings Before Interest, Tax, Depreciation and Amortization
ERV	Estimated Realisable Value
Former Accountants	Hymans Feitelberg Chartered Accountants
FY	Financial Year
IPS	Insolvency Practice Rules
PPSA	Personal Property Securities Act 2009
PPSR	Personal Properties and Securities Register
ROCAP	Report on Company Activities and Property
YTD	Year to Date

## 1. EXECUTIVE SUMMARY

### 1.1. Introduction

Christian Sprowles and I were appointed as Joint and Several Voluntary Administrators of the Company on 10 November 2022 pursuant to a resolution passed by the Company's Directors.

The Company was incorporated on 20 February 2013 in New South Wales and previously produced wine products. The Directors are Mr Jae Jang ("Mr Jang") and Ms Gu Ja Jang ("Ms Jang").

The Company ceased to operate on or about July 2017. Mr Jang advised that the Company ceased to operate due to the ongoing dispute with the ATO in relation to the eligibility of the Company to obtain a licence to produce wine products and inability to claim Wine Equalisation Tax ("WET") rebates.

A proposal for a Deed of Company Arrangement ("DoCA") has been received from Divas Beverages Australia Limited ("DBA") and Mr Jung, which will enable the payment of all outstanding superannuation guarantee charge and a return to unsecured creditors of the Company.

This is the Administrators report to creditors pursuant to Section 439A of the Act.

If creditors have any queries, please contact Anny Ngo on (02) 8020 5853 or by email at [anny@hogansprowles.com.au](mailto:anny@hogansprowles.com.au).

### 1.2. Purpose of this report and second meeting of creditors

The purpose of this report is to provide creditors with details about the Company's business, property, affairs and financial circumstances in preparation for the upcoming second creditors meeting.

This report informs creditors of our investigative findings and sets out the Administrators' opinion about each of the options available to creditors at the second meeting, together with our opinion as to the best course of action. Creditors will be entitled to vote on the future of the Company at the second meeting (often referred to as the decision meeting).

We have recommended creditors accept the DoCA at the second meeting. The reasons our opinion has been provided at section 11 of this report and in the attached Statement of Administrators' Opinion. In summary, the DoCA provides for a greater return to creditors compared with the alternatives. Details of the estimated returns are summarised at section 1.5 of this report.

The second meeting of creditors will be held on Tuesday, 13 December 2022 at the offices of virtually and at HoganSprowles at Level 9, 60 Pitt Street, Sydney NSW at 11:00AM.

### 1.3. Administrators' opinion

In regard to the matters set out in this report, creditors will be able to vote on one of the following outcomes at the next meeting:

- The Administration comes to an end (and control of the Company reverts to its director); or
- The Company execute a Deed of Company Arrangement ("DoCA"); or

- The Company be wound up.

We recommend that it is in creditors' interests to resolve for the Company to execute a DoCA at the Second Meeting of Creditors. A statement of our opinion is provided at **Annexure A** of this report.

Creditors may also resolve to adjourn the Second Meeting of Creditors for a period of up to 45 days.

#### 1.4. Deed of Company Arrangement proposal

A DoCA proposal was received from Divas Beverages Australia Limited and Mr Jang ("Deed Proponents") on 1 December 2022. The DoCA allows for payment of the outstanding superannuation obligations for the employees and a return to the unsecured creditors of the Company. In a liquidation scenario there is unlikely to be a dividend to any class of creditor.

The essential elements of the Deed are as follows:

- Contribution from the Deed Proponents in the sum of \$470,000 to be paid as follows:
  - Eight (8) monthly instalments of \$50,000 payable on the 23rd of the month commencing on the 23<sup>th</sup> February 2023, after the execution of the DoCA; and
  - Last instalment payable of \$70,000.
- The Directors and related entities agree to forbear from enforcing their claim totalling \$2,802,011 against the Company until later of either 12 month's from effectuation of the DOCA or the Company has sufficient assets available to pay its debts when they fall due and make repayments to the deferred creditors, unless the DOCA is terminated otherwise than by effectuation;
- Control of the Company return to the Directors upon execution of the DoCA;
- Extinguish any claim against the Directors.

The intention of the Administrators would be to pay an interim dividend to priority unsecured creditors once there are sufficient funds held.

#### 1.5. The estimated return to creditors

The estimated returns to the various classes of creditors are provided below:

	Value of Claim (\$)	Liquidation	DoCA
Priority unsecured - Superannuation	155,967	Nil	100 c/\$
Unsecured Creditors	2,430,921	Nil	10.45c /\$
Deferred Creditors (Related Parties)	2,802,011	Nil	Nil

The DoCA allows for the payment of outstanding priority employee entitlements in full and a dividend of 10.45 cents in the dollar to non-related party unsecured creditors based on the information available.

### 1.6. Investigation summary

Investigation / Recovery	Corporations Act	Total claim \$
Insolvent trading	Section 588G	\$135,405
Related party transactions	Section 588FE(4)	Uncertain

Our preliminary investigations indicate that the Company became insolvent from around January 2021 when related entity, Diva Beverages Australia Limited (“DBA”) withdrew funding. As a consequence, the Company defaulted on payments due on 17 January 2022 pursuant to the Deed of Settlement with the ATO which was executed on 20 August 2021. The Company was unable to remedy the breach. On 27 April 2022, the ATO issued a default notice to the Company.

Further details of our investigations are provided at section 10 of this report.

### 1.7. Reasons for the Company’s failure

In our opinion the reasons for the Company’s failure are as follows:

- Ongoing disruption and costs to the business associated with ATO litigation;
- Inability to obtain third party funding to meet the Deed of Settlement; and
- Increase in costs associated with importation operations between NZ and Australia.

### 1.8. Winding Up Application

The ATO filed a statement of claim against the Company in the Federal Court of NSW (“the Court”) and lodged a winding up application on 4 November 2022 for unpaid PAYG withholding, GST and superannuation, which has now been automatically stayed on our appointment. The winding up hearing is scheduled to be held on 14 November 2022.

The outcome of the second meeting of creditors will determine if the matter will be held on 14 November 2022. The Directors appointed us as voluntary administrators and we have scheduled the second meeting of creditors to be held on 13 December 2022.

## 2. INTRODUCTION

### 2.1. Role of the Administrator

Administrators are empowered by the Act to assume control of an insolvent company, to manage the Company’s affairs and deal with its assets in the interests of its creditors and members.

The intention of a Voluntary Administration is to maximise the prospects of a company, or as much as possible of its business, continuing in existence or, if that is not possible, to achieve a better return to creditors and members than would be achieved by its immediate liquidation. During an administration, there is a moratorium over most pre-administration creditor claims.

Administrators are required to investigate a company's affairs and report to creditors on the Administrators' opinion as to which outcome of the administration process is in the best interest of creditors.

In our opinion, the Voluntary Administration leading into the proposed DoCA, has met the obligations pursuant to section 435A of the Act.

## **2.2. First Meeting of Creditors**

The first meeting of creditors, convened under Section 436E of the Act, was held on Tuesday, 22 November 2022 at 10:00am at HoganSprowles, Level 9, 60 Pitt Street, Sydney, NSW 2000.

A committee of inspection was not formed by creditors.

An alternate Administrator was not proposed and as a result we remain the Administrators of the Company.

## **2.3. Second Meeting of Creditors**

The second meeting of creditors will be held on Tuesday, 13 December 2022 at the offices of HoganSprowles at Level 9, 60 Pitt Street, Sydney NSW at 11:00am.

Creditors are encouraged to attend at least 15 minutes prior to this time to enable orderly registration for the meeting, please submit proxy and proof of debt forms by 4:00 pm on Monday, 12 December 2022.

Attendance at the meeting, whilst encouraged, is not mandatory and non-attendance will not impact the rights of creditors.

**Annexure B** includes the Notice of Meeting, proxy form and informal proof of debt.

## **3. DISCLAIMER AND INDEPENDENCE**

### **3.1. Disclaimer**

In reviewing this report, creditors should note the following:

- The statements and opinions given in this report are given in good faith and in the belief that such statements and opinions are not false or misleading. Except where otherwise stated, we reserve the right to alter any conclusions reached on the basis of any changes or additional information which may be provided to us between the date of this report and the date of the Second Meeting of Creditors.
- Neither we, nor HoganSprowles nor any member or employee thereof is responsible in any

way whatsoever to any person in respect of any errors in this report arising from incorrect information provided to us.

- In considering the options available to creditors and formulating their recommendation, the Administrators have necessarily made forecasts of asset realisations and total creditors. These forecasts and estimates may change as asset realisations and any claims progress.

### 3.2. Independence

In accordance with Section 436DA of the Act and the ARITA Code of Professional Practice, our Declaration of Independence, Relevant Relationships and Indemnities was tabled at the first meeting of creditors and provided to creditors in our first circular dated 14 November 2022.

This declaration disclosed information regarding the independence, any prior personal or professional relationships the Administrators or HoganSprowles had with the Company or related parties and any indemnities received in relation to this appointment.

There is no change to the information provided in the Declaration of Independence, Relevant Relationships and Indemnities dated 14 November 2022.

## 4. STATUTORY INFORMATION

### 4.1. ASIC Database

Below is a summary of the ASIC database for the Company.

Company Details		
Date of Registration	20 February 2013	
Registered Office	112 Beaconsfield Street, Silverwater NSW 2128	
Principal Place of Business	Suite 1803, 201 Elizabeth Street, Sydney NSW 2000	
Name	Position	Appointed
Gu Ja Jang	Director & Secretary	11 October 2021
Jae Jang	Director	8 July 2022
Share Structure	Amount Paid	Amount Unpaid
200,000 Ordinary Shares	\$200,000.00	\$0.00

### 4.2. Personal Properties and Securities Register

PPSR legislation became operational on 30 January 2012 and among other things replaced the previous system of security registration and retention of title. To claim a security interest in the Company (i.e. as a secured or retention of title creditor), creditors are required to have registered their interest on the PPSR.

A summary of the Company's registered secured interest and status is provided below:



Secured Party	Registration	Collateral Class	Status
Elgas Limited	201704010100157	Other goods	Discharged on 11 November 2022
Active Forklifts (Australia) Pty Ltd	201811130028713	ALL PAP	Awaiting response
Australian Tartaric Products Pty Ltd	202001160020832	Other goods	Discharged on 29 November 2022

Active Forklifts (Australia) Pty Ltd holds an ALLPAP. We have written to them but have not received a response to our letter. We understand there is no outstanding debt and that the ALLPAP should be removed.

Creditors that haven't registered their interest on the PPSR, prior to the date of the Administrators' appointment, are not entitled to claim a security interest in goods held by the Company. The fact that a creditor has or cannot register their interest on the PPSR, does not prevent that creditor from asserting its claim as an unsecured creditor of the Company, and subject to the availability of funds, receipt of a dividend through a liquidation or DoCA.

### 4.3. Books and Records

The Administrators are required to provide an opinion as to whether the Company's books and records are maintained in accordance with Section 286 of the Act for a period of seven years. The Act requires that a company maintain financial records that correctly record and explain its transactions, financial position and performance, and enable true and fair financial statements to be prepared and audited.

Failure to maintain books and records may give rise to a presumption of insolvency pursuant to Section 588E of the Act. This presumption may be relied upon by the Liquidator in an application for compensation for insolvent trading and other actions for recoveries pursuant to Part 5.7B of the Act from the directors and related parties.

We have been provided with access to the Company books and records and have obtained the following records from Mr Jang, the external accountant and other third parties:

- Completed Report on Company Activities and Property ("RoCAP");
- Financial Statements prepared by the accountant for the financial years ("FY") 2014 to 2016;
- Management account financials for FY15 to FY17;
- ATO running balance account from October 2014 to December 2022;
- ANZ Bank statements for the period 4 September 2013 to 2 September 2022;
- Legal documentation in relation to the matter between the related entities and the Company;
- Some documentation with respect to related party loans.

In our opinion, the Director has assisted us with our investigations and the books and records of the Company have been kept in a manner that complies with section 286 of the Act.

### 4.4. Information for Creditors

To assist creditors, employees and shareholders understand the Voluntary Administration process ASIC has released a package of insolvency information sheets. These have the endorsement of the

ARITA and are attached as **Annexure E**. You can download these as PDF files from the ASIC and ARITA. The respective websites are:

- [www.arita.com.au](http://www.arita.com.au)
- [www.asic.gov.au](http://www.asic.gov.au)

## 5. OVERVIEW OF THE COMPANY

### 5.1. Background

The Company was established on 20 February 2013 and established as a producer for wine based products. The Company made an application for a Concessional Spirit Permit (“CSP”) with the ATO.

In 2014, a dispute aroused between ATO and the Company in relation to the wine/spirit classification of the Company’s products. On or around April 2015 the ATO denied the Company’s CSP and determined that the Company was not eligible to claim WET rebate, as the Company’s products did not qualify under the *A New Tax System (Wine Equalisation Tax) Act 1999 (Cth)* (WET Act). The Company disputed the ATO ruling regarding their products and commenced litigation against the ATO. The ongoing litigation lasted for several years.

As the Company was ineligible to claim WET rebates, the Directors made the decision that the best option was that the Company cease its operations to produce the products and became an importer of wine based products sourced from New Zealand (“NZ”) in about 2015 to November 2017.

The Company negotiated an agreement with related entities in NZ to produce the wine based products and the Company would import the products into Australia.

The Company incurred significant legal costs and expenses associated with facilitating production in NZ which added financial pressure on the Company and the management of the day-to-day business.

During this period the Company lodged their tax returns and claimed the Wine Equalisation Tax (“WET”) rebates, which the Company was intending to utilise the rebates to offset to their PAYG and Superannuation liability.

While the Company operated and imported products from NZ, the Company continued to defend its legal position against the ATO in relation to WET.

Mr Jang advises the ongoing litigation with the ATO had a major effect on the Company’s business dealings in NZ and Australia and significantly impacted the Company’s ability to operate. This caused financial and personal pressures on the Directors and its related entities. Ultimately, the Company cease to operate in or around July 2017 as the business was not profitable and could not sustain the significant overheads.

In 2015 and 2019, the ATO issued garnishee orders against the Company, DBW and Mr Jang personal account which impacted the operations of the Company.

In March 2018, the Court handed down their ruling which stated the Company was able to claim WET relating to certain products and they were considered within the statutory definition

prescribed in the WET Act, while other products were not eligible for WET. The legal proceedings were funded by various related parties, being Deannah Jang, Mr Jang, DBW and DBA.

As a result of the judgement of the Court, the Company and the ATO reached a commercial agreement whereby the Company agreed to a revised taxation liability of \$2.058M.

On 20 August 2021, the Company executed a Deed of Settlement (“the Deed”) with the ATO. Under the Deed the Company would enter into a payment arrangement to repay the outstanding tax liability over a period of eleven (11) months.

The Company made payment totalling \$108k as per the Deed through funding obtained by DBA and had sixteen (16) repayments remaining (totalling \$1.2M). DBA withdrew their financial support on 17 January 2022 and as such, the Company defaulted on the terms of the Deed and the Company was not able to remedy the breach. On 27 April 2022, the ATO issued a notice of default to the Company.

On 4 November 2022, the ATO lodged a winding up application against the Company.

On 10 November 2022, the Directors made the decision to appointed Christian Sprowles and I as Voluntary Administrators of the Company

## 6. HISTORICAL FINANCIAL RESULTS

The Company’s financial year ends on 30 June of each year. We have received the Company’s financial statements prepared by the external accountant for FY16, and the management accounts for FY15 to FY17 to consider the historical financial results of the Company.

We are not confident that the FY17 management accounts are a true reflection of the financial position of the Company.

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## 6.1. Profit and Loss

Profit and Loss	FY15	FY16	FY17
	Management (\$)	Financials (\$)	Management (\$)
<b>Income</b>			
Sales	2,742,451	5,349,601	6,097,807
Less: Cost of goods sold	1,163,788	2,890,000	3,246,865
<b>Gross Profit</b>	<b>1,578,664</b>	<b>2,459,601</b>	<b>2,850,942</b>
<b>Gross Margin %</b>	<b>58%</b>	<b>46%</b>	<b>47%</b>
<b>Other Income</b>			
Wine equilisation tax credit	142,020	59,461	500,000
<b>Total Income</b>	<b>1,720,684</b>	<b>2,519,062</b>	<b>3,350,942</b>
<b>Expenses</b>			
Accountancy & bookkeeping fees	78,743 4%	92,802 2%	105,876 3%
Advertising & promotion	43,961 2%	200,489 5%	190,634 5%
Freight, Cartage & Courier	252,369 13%	935,661 24%	404,440 10%
Hire/Rent of plant & equipment	31,928 2%	92,365 2%	106,958 3%
Legal fees	74,850 4%	139,475 4%	580,900 14%
Motor vehicle expenses	45,261 2%	51,472 1%	25,563 1%
Rent on land & buildings	281,705 14%	471,562 12%	439,914 10%
Salaries & wages	856,006 43%	1,347,741 35%	1,713,877 41%
Superannuation	72,293 4%	101,520 3%	152,008 4%
Others	274,060 14%	394,848 10%	472,415 11%
	<b>2,011,175</b>	<b>3,827,935</b>	<b>4,192,584</b>
<b>EBITDA</b>	<b>(290,491)</b>	<b>(1,308,873)</b>	<b>(841,641)</b>
Add: Interest income	519	694	566
Less: Depreciation	-	12,084	-
Less: Interest Expense	440	366	302
<b>Net Profit/(loss)</b>	<b>(290,412)</b>	<b>(1,320,629)</b>	<b>(841,377)</b>

Our observations are provided below:

- The Company experienced remarkable sales growth in FY16 with sales increased by 95%.
- Despite achieving positive gross margins and sales growth, the Company operated at a net loss from FY15 to FY17, with the highest loss incurred in FY16 circa \$1.3 million. This was contributed to the increase costs associated with setting up the production facility and agreement with entities in NZ and premises in Australia.
- Adjustments should be made in FY17 for the WET rebate which does not reflect the current tax position of the Company. This will consequently increase the loss position of the Company in FY17 to \$1,341,377.

- The Company's largest expense was in relation to wages and salaries, which averaged 40% of total cost over the last three financial years. The Company employ staff for the production facility in NZ and and maintain employees in Australia.
- Legal expenses increased from FY16 to FY17 due to the ongoing litigation with ATO in regards to the WET rebates.
- Freight, cartage and courier increased in FY16 from \$252K to \$935K in exporting the products from NZ and Australia.
- Our investigations indicated there are two (2) vehicles previously registered under the Company. A 2004 Ford Transit van was in a state of non-repair and was disposed of for scrap. We have been advised by Mr Jang a 2010 Mercedes Benz 207 was owned by his late father and not owned by the Company. It was in a state of non-repair and was sold for scrap for \$400.

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## 6.2. Balance Sheet

Balance Sheet	FY15 Management (\$)	FY16 Financials (\$)	FY17 Management (\$)
<b>Current Assets</b>			
Cash assets	4,045	35,414	28,632
Receivables	-	1,037,074	1,010,912
Inventory	-	50,194	72,190
Car loan	-	-	13,414
Bank Guarantee - Term deposit	22,399	22,399	22,399
Advance to DBW in asset	-	-	-
	<b>26,444</b>	<b>1,145,081</b>	<b>1,147,547</b>
<b>Non-Current Asset</b>			
Motor vehicle	-	-	19,355
Property, plant and equipment	-	120,005	152,306
Intangible assets	-	240	240
	-	<b>120,245</b>	<b>171,901</b>
<b>Total Assets</b>	<b>26,444</b>	<b>1,265,326</b>	<b>1,319,448</b>
<b>Current Liabilities</b>			
Trade payables	-	117,316	1,733,801
Financial liability - credit cards	(44,298)	20,995	41,657
Current tax liabilities	-	352,885	650,626
Provisions - superannuation	-	38,292	97,402
Other	361,154	-	3,085
	<b>316,855</b>	<b>529,488</b>	<b>2,526,571</b>
<b>Non Current Liabilities</b>			
Factor one loan	-	941,064	882,910
Loan - Director	-	1,158,637	1,158,637
	-	<b>2,099,701</b>	<b>2,041,547</b>
<b>Total Liabilities</b>	<b>316,855</b>	<b>2,629,189</b>	<b>4,568,118</b>
<b>Net Assets</b>	<b>(290,412)</b>	<b>(1,363,863)</b>	<b>(3,248,671)</b>

Our observations are provided below:

- The Company was net asset deficit during FY15 to FY18, with the highest deficit recorded in FY17, being \$3.2M.
- Plant and equipment consist of production equipment purchased by the Company for the production facility in NZ which has since been sold or a lien claimed by the landlord when the premises was repossessed by the landlord for non-payment of lease. The Company currently does not own any equipment or stocks.

- The Company recorded statutory and superannuation liability of \$650K and \$97K respectively in FY17. We have received a proof of debt from the ATO on 21 November 2022, current outstanding statutory liability of \$2,562,587.64. The debt comprised of RBA deficit debts in the amount of \$2,404,821, late lodgement penalty of \$1,800 and superannuation guarantee charges in the amount of \$155.967.
- Our investigations indicate there are no vehicles of any commercial value registered in the name of the Company as at the date of our appointment.
- The balance sheet in FY16 and FY17 discloses Director loans to the Company of \$1,158,637, which was used for working capital and the payment of legal fees associated with the litigation with the ATO. Ms Jang has submitted proof of debt form in relation to the late estate of Jung Jang (her late husband) for a loan given to the Company totalling \$831,111 in support of legal expenses incurred by the Company. Based on my review of the management account, the claim appears to be valid.
- The Company held a debtor finance facility with Factor One and was fully paid out in 2017.
- We have received a proof of debt from ANZ disclosing \$36,113.74 debt owed as to the date of my appointment relating to a corporate credit card. Mr Jang has provided a personal guarantee and has undertaken to arrange payment to ANZ to clear the account.
- A term deposit of \$22k was in respect to a lease of the Company's old production facility located in Melbourne. The bond was claimed by the landlord in full on the basis of rental arrears.

### 6.3. Working Capital

Ratio Analysis	FY15 (\$)	FY16 (\$)	FY17 (\$)
Working capital	(290,412)	615,593	(1,378,757)
Quick Ratio	0.08	2.07	0.43
Current Ratio	0.08	2.16	0.45

Our observations are below:

- The Company experienced significant increase in its working capital from FY15 to FY16.
- The business saw a significant drop in its working capital in FY17. This can be attributed to the ATO issuing a revised tax assessment and increase in expenditure on legal costs and setting up operations to support importation between Australia and NZ.
- The above analysis indicated that the Company had working capital issues as their liquidity is less than 1 throughout FY17.

#### 6.4. Company Director’s Explanation for the Company’s Difficulties

Mr Jang has advised the Company’s financial difficulty occurred when the ATO determined the Company was not eligible to claim WET rebates and issued a revised tax assessment. Prior to the revised assessment, the WET rebates would have been sufficient to offset against the PAYG withholding and GST liability of the Company.

#### 6.5. Administrators’ Opinion on the Reasons for the Company’s Difficulties

In our opinion the reasons for the Company’s failure are as follows:

- Ongoing disruption and costs to the business associated with WET litigation;
- Inability to obtain funding from third parties to meet the obligations under the Deed executed with the ATO; and
- Increase in costs associated with importation operations between NZ and Australia.

### 7. REPORT ON COMPANY ACTIVITIES & PROPERTY (“ROCAP”)

The Act requires directors and secretary to complete and provide to the Administrators a RoCAP, detailing the financial position of the Company at the date of our appointment. The RoCAP discloses estimated realisable value (ERV) of known assets and liabilities.

Report On Company Activities & Property	Director's ROCAP Book value (\$)	Director's ROCAP ERV (\$)
<b>Assets</b>		
Cash at Bank	-	-
Trade Debtors	-	-
Vehicle	-	-
<b>Total Assets</b>	-	-
<b>Liabilities</b>		
<b>Priority Creditors- employees</b>	155,967	155,967
<b>Unsecured Creditors</b>		
ATO	2,406,621	2,406,621
Trade creditors	24,300	39,414
Related Parties	2,802,011	2,802,011
<b>Total Liabilities</b>	<b>5,232,932</b>	<b>5,232,932</b>
<b>Estimate Surplus/(Deficiency)</b>	<b>(5,232,932)</b>	<b>(5,232,932)</b>

The priority employees claim of \$155,967 is in relation to the unpaid superannuation including its interest components based on the ATO’s claim.



Please refer to our estimated position statement in Section 9 for further commentary in relation to the Administrators' estimated realisable values based our investigations to date.

## 8. DEED OF COMPANY ARRANGEMENT

### 8.1. Introduction

On 1 December 2022, we received a DoCA proposal from Diva Beverages Australia Pty Ltd, a related company and Mr Jae Jang.

The DoCA is estimated to pay 100 cents in the dollar to priority creditors, in particular the outstanding superannuation. The payment to unrelated - unsecured creditors will result in a better return than under liquidation of 10.54 cents in the dollar.

A comparison of the returns from DoCA and Liquidation scenarios are provided at section 9 of this report.

### 8.2. Key terms

Below is a summary of the key terms of the deed proposal and we have attached a copy of the deed proposal to this report. We note an interim dividend will be dollar to priority creditors, in particular the outstanding superannuation at a rate of 100 cents in the dollar when there are sufficient funds to do so.

Term	Description
Deed Proponent	Divas Beverages Australia Limited and Jae Jang.
Deed Administrator	The Administrators will become the Deed Administrators
Composition of Deed Fund	The Deed Fund shall comprise of \$470,000 to be paid to the Administrators' nominated account details as follows: <ul style="list-style-type: none"><li>(a) Commencing on 23rd of February 2023, Eight (8) monthly instalments of \$50,000;</li><li>(b) Final instalment of \$70,000;</li></ul>
Distribution of Deed Fund	The Deed Administrator shall distribute the Deed Fund in the following order of priority: <ul style="list-style-type: none"><li>(a) firstly, in payment of the Voluntary Administrators' costs, charges and expenses (including their remuneration);</li><li>(b) next, in payment of the Deed Administrators' costs, charges and expenses (including their remuneration);</li><li>(c) next, in payment of superannuation at the rate of 100 cents in the dollar,</li><li>(d) next, in payment of unpaid salary, annual leave or other entitlements of employees of the Company; and</li></ul>

- (e) finally, payment of a pari passu dividend to the Company's unsecured creditors (excluding the Deferred Creditors).

Termination and Variation of Deed	This Deed will be effectuated once the Deed Contributions as defined in the Deed Agreement has been paid to the Company in full, and the Deed Administrators have distributed those funds.
Control of the Company	<p>The control of the Company will return to the Company's Director upon execution of the DoCA.</p> <p>The Director will provide an undertaking to ensure the taxation lodgements are up to date.</p>
Related party/Deferred creditors	<p>The Deferred Creditors will agree to forbear from enforcing their claims against the Company as at the date of the appointment of the Voluntary Administrators until the later of:</p> <ul style="list-style-type: none"><li>(a) 12 months' from effectuation of the DOCA; or</li><li>(b) The Company has sufficient assets available to pay its debts as and when they fall due and make repayments to the Deferred Creditors, unless the DOCA is terminated otherwise than by effectuation.</li></ul>

## 9. ESTIMATED RETURN TO CREDITORS IN A DOCA AND LIQUIDATION

In a liquidation scenario, we estimate that the assets of the Company will be insufficient for the purposes of enabling a dividend to unsecured creditors. Any recovery will be reliant on the successful recovery of pursuing voidable transactions and breaches of director's duties for inadequate books and records and presumption of insolvent trading. At this stage the success of recovery is uncertain and generally costly to pursue.

The proposed DoCA will enable priority creditors (employees) to be paid all their outstanding superannuation 100 c/\$.

Our investigations indicate that the Company's books and records have been maintained in accordance with Section 286 of the Act.

It is expected that approximately \$254,033 will be available for distribution to unsecured creditors which represents a return of 10 cents in the dollar to participating unsecured creditors. The distribution will be dependent on the final quantum of claims and the table below approximates the return to creditors.

We have reviewed the forecast working capital position of DBA (February 2023 to December 2023) for the term of the DOCA and DBA has a positive working capital to make the payment as sent out in the DOCA proposal.

	Value of Claim \$	Liquidation	DoCA
Priority unsecured - Superannuation	155,967	Nil	100 c/\$*
Unsecured Creditors	2,430,921	Nil	10.45 c/\$
Deferred Creditors (Related Parties)	2,802,011	Nil	Nil*

\*includes interest and penalties and related party unsecured Superannuation.

Deferred creditors are related party creditors who have agreed to forbear from enforcing their claims against the Company as at the date of the voluntary administration until later of either 12 months' from effectuation of the DOCA or the Company has sufficient assets available to pay its debts as and when they fall due and makes repayments to the Deferred Creditors unless the DOCA is terminated otherwise than by effectuation.

We provide below our estimated position statement, noting that the estimated positions are only estimates based on the information available to the Administrators at the time of preparing this report.

**INTENTIONALLY LEFT BLANK**

Estimated Position Statement	Notes	Book Value 10-Nov-22 \$	Liquidation ERV \$	DOCA ERV \$
<b>Assets Subject to a Specific Charge</b>	1			
Active Forklifts (Australia) Pty Ltd - ALLPAAP		-	-	-
<b>Assets</b>				
Cash	2	-	-	-
Inventory	3	-	-	-
Plant & Equipment & Leasehold Improvements	4	-	-	-
Deed contribution	5		-	470,000
Liquidator recoveries	6		Uncertain	-
<b>Total assets available</b>		<b>0</b>	<b>0</b>	<b>470,000</b>
<b>Less: Costs (excl. GST)</b>	7			
VA fees & disbursements			35,000	35,000
Legal fees			-	15,000
Liquidators Fees & Disbursements			50,000	-
DOCA Fees & Disbursements			-	10,000
<b>Total Costs</b>			<b>85,000</b>	<b>60,000</b>
<b>Total Surplus/(Deficiency) for Priority Creditors</b>			<b>(85,000)</b>	<b>410,000</b>
<b>Less: Employee Entitlements</b>	8			
Superannuation			155,967	155,967
<b>Total Employee Entitlements</b>			<b>155,967</b>	<b>155,967</b>
<b>Total Surplus/(Deficiency) for Unsecured Creditors</b>			<b>(240,967)</b>	<b>254,033</b>
<b>Unsecured Creditors (non related)</b>	9			
ATO - RBA			2,406,621	2,406,621
Trade creditors			24,300	24,300
<b>Total Unsecured Creditors</b>			<b>2,430,921</b>	<b>2,430,921</b>
<b>Unsecured Creditors (Related) (non participating creditors in DOCA)</b>				
Loan - Directors			1,200,000	-
Late Estate of Jung Umg Jang			831,111	-
Divas Beverages Australia Limited			480,900	-
Minks Music Pty Ltd			290,000	-
			<b>2,802,011</b>	<b>0</b>
<b>Unsecured creditors</b>			<b>Nil</b>	<b>0.1045</b>

## Notes

1. Refer to section 4.2 of this report regarding the security interests.
2. We have identified 4 accounts with ANZ. We have reviewed the ANZ accounts which disclosed a debt owing on a corporate credit card of \$36,114. ANZ has provided a proof of debt with respect to this claim. The Director has advised the credit card will be repaid by him personally and will not form part of the DOCA.
3. There was no inventory held by the Company on the date of our appointment.
4. Refer to section 6.2 of this report for further details.
5. Refer to section 8 of this report for details of the DOCA proposal.

6. Refer to section 10 of this report for details.
7. Refer to section 14 of this report for details.
8. The Company's books and records disclosed employees outstanding superannuation as \$97,402 as at FY17.

The ATO has submitted a claim for outstanding superannuation of \$155,967 including general interests.

Furthermore, pursuant to section 556 of the Act, the priority awarded to related party employee entitlements are capped at \$2,000 for wages and superannuation and \$1,500 for annual leave and retrenchment entitlements.

In a liquidation scenario, unsecured related party creditors would be entitled to prove for any distribution to unsecured creditors. However, in the DoCA scenario, the related parties would defer any claim for any distribution.

9. Below is a summary of the unsecured creditors as at the date of this report:

Creditors	Amount (\$)
<b>Unsecured Creditors</b>	
ATO	2,406,621
Rai Bottling	21,000
Real Groovy Entertainment	3,300
	<u>2,430,921</u>
<b>Unsecured Creditors (Related)</b>	
Loan - Directors	1,200,000
Late Estate of Jung Umg Jang	831,111
Diva Beverages Australia Limited	480,900
Minks Music Pty Ltd	290,000
	<u>2,802,011</u>
<b>Total Unsecured Creditor</b>	<b>5,232,932</b>

In a liquidation scenario, unsecured related party creditors would be entitled to prove for any distribution to unsecured creditors.

## 10. RECOVERIES, OFFENCES, VOIDABLE TRANSACTIONS & INSOLVENT TRADING

We have reviewed the Company's financial statements, general ledgers, bank statements and books and records to identify possible recoveries and offences.

For general information about what offences may be identified by the Administrators, please refer to the attached ARITA information sheet entitled "*Creditor Information Sheet: Offences, Recoverable transactions and Insolvent Trading*" marked as **Annexure E**.

## 10.1. Voidable Transactions

Corporations Regulation 5.3A.02 requires Administrators to specify whether there are any transactions that appear to be voidable transactions in respect of money, property or other benefits which may be recoverable by a liquidator under Part 5.7B of the Act.

This issue is relevant to creditors if they are being asked to choose between a DoCA or liquidation, as voidable transactions are only recoverable if a company is being wound up, i.e. in liquidation.

The main defences to a voidable transaction claim are:

- Good faith defence - It would be necessary to establish that the Company was insolvent, and the recipient had reasonable grounds for suspecting that the Company was insolvent at the time or would become insolvent.
- Running account balance defence – If in the course of the relationship, the level of the company's net indebtedness is increased and reduced from time to time, then all the transactions are taken to be a single transaction for the purposes of establishing whether there was an unfair preference. Simply stated in the context of a 'continuing business relationship' the amount of the unfair preference will be determined by considering all transactions (payments and further supplies) between the company and the creditor. The Courts have allowed Liquidators to choose the starting date of the period as the date which best suits them, so long as it falls within the relation back period. The end date is the commencement of the administration. Therefore, the amount of the preference will usually be the difference between the highest amount owed during the period and the amount owing at the time of the appointment.
- The defendant creditor is a secured creditor - generally speaking, a Liquidator cannot pursue a secured creditor and can only pursue unfair preferences in respect of unsecured debts.

To the extent that information has been available, the Administrators have conducted the following preliminary investigations in relation to voidable transactions:

- Review the books and records to determine whether there have been any unfair loans to or from the Company;
- Review books and records for the period approximately 6 months prior to the appointment of the Administrators to determine whether any creditors have been preferred over the general body of creditors as a result of any transaction; and
- Review documentation provided to us by third parties.

A summary of the various transactions is set out below:

### a) **Unfair Preferences (Section 588FA)**

Unfair preferences are transactions between the Company and a creditor resulting in the creditor receiving more than the creditor would receive if the transaction were set aside and the creditor was to prove for this amount in the winding-up. Voidable transactions must have taken place in the period beginning six (6) months prior to the relation back day and ending on the date of the appointment of Administrators. Being 10 May 2022 to 10 November 2022.

From our investigations the documentations available to date, we have not identified any transactions that would be subject to this Section of the Act.

#### **Uncommercial Transactions (Section 588FB)**

Section 588FB of the Corporations Act provides for transactions that were not beneficial or were detrimental to the Company as being void. The transaction must have occurred when the Companies was insolvent or would become insolvent.

From our investigations and the records available to date, we have not identified any transactions that would be subject to this Section of the Act.

#### **b) Unfair Loans (Section 588FD)**

Section 588FD of the Act provides for loans to be voided in circumstances where interest or charges are considered extortionate.

From our investigations and the records available to date, we have not identified any transactions that would be subject to this Section of the Act at this stage.

#### **c) Unreasonable Director-Related Transactions (Section 588FDA)**

Section 588FDA of the Corporations Act provides for transactions where it may be expected that a reasonable person in the Company's circumstances would not have entered into the transaction having regard to the benefits, detriments and respective benefits to other parties.

From our investigations to date, we have not identified any transactions that would be subject to this Section of the Act.

#### **d) Related Party Transactions (Section 588FE(4))**

Section 588FE(4) of the Act provides for payments to related parties may be voided where the transactions were entered during the four (4) years ending on the relation back period.

From our investigations to date, we have not identified any transactions that would be subject to this Section of the Act, however further investigation would be required if a liquidator was appointed.

#### **e) Circulating security interest created within 6 months before relation back date (Section 588 FJ)**

Our searches reveal there were no circulating security interest created within 6 months before our appointment.

#### **f) Credit-defeating deposition (Section 588 FDB, 588GSB & 588GAC)**

Our investigation has not identified any potential creditor – defeating disposition.

**g) Arrangements to Avoid Employee Entitlements (Section 596AB)**

We have not identified any transaction of this nature.

**h) Transactions with the Purpose of Defeating Creditors (Section 588FE(5))**

We have conducted a review of the transaction of the Company to identify any transactions that may have been entered into for the purpose of defeating creditors.

We have not identified any transaction to date for the purpose of defeating creditors that would be recoverable by a liquidator.

**10.2. Insolvent Trading (Section 588G)**

Section 588G of the Act provides that a company's director(s) has a duty to protect the company from incurring debt when there are reasonable grounds for suspecting that the company will be unable to pay its debts as and when they fall due. Section 588M of the Act provides that a Liquidator is able to recover 'damages' from the director(s) of an insolvent company, in an amount equal to the loss or damage suffered by the company as a result of a breach of duty.

Section 95A(1) of the Corporations Act 2001 provides a definition of a solvent entity as follows:

*"A person is Solvent if, and only if, the person is able to pay all of its debts, as and when they become due and payable"*

An insolvent entity is defined under Section 95A(2) of the Corporations Act 2001 as:

*"A person which is not Solvent is Insolvent"*

Based on our preliminary analysis, we are of the view that the Company is insolvent from at least January 2022 having regards to the above definition of insolvency. The Company was unable to meet the terms of the Deed of Settlement and continued to accrue general interest and penalties on the outstanding tax liabilities.

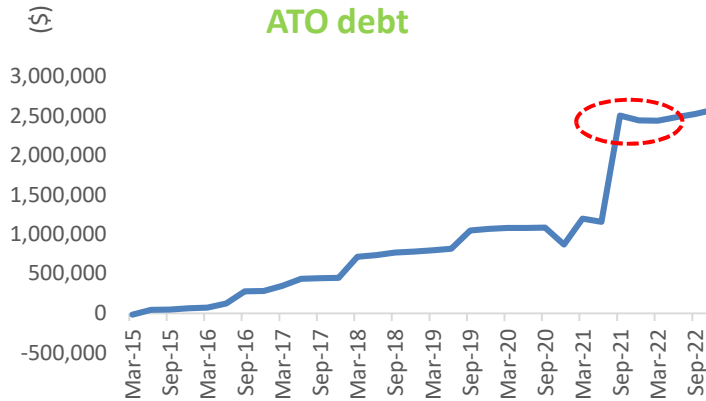
**a) Indicators of Insolvency**

We have also assessed the following factors:

- Cash flows constraints due to significant costs incurred in setting up operations between Australia and NZ and significant legal costs in defending the ongoing litigation with the ATO.
- Net asset position deteriorated throughout FY16 and onwards.
- A review of the ATO's running account shows that the Company has been accruing statutory liabilities from March 2016 and increased sharply following ATO's audit and revised assessment from August 2021, from \$1.15M in June 2021 to \$2.4M in June 2022. The ATO's RBA debt includes interest and penalties of circa \$392K.



An overview of the statutory debt movements over the periods is provided below:



The Company entered into a Deed with the ATO in August 2021 and contributed several payments pursuant to the Deed. However, the Company defaulted on 17 January 2022 due to the inability to obtain further funding from DBA or any third parties. On 27 April 2022 the ATO issued a default notice and the Company was not able to remedy the breach.

The ATO subsequently filed a statement of claim against the Company and lodged a winding up application on 4 November 2022 with respect to the claim

- The Current ratios fell below 1 in FY17 indicating liquidity issues.

Given the above and investigations to date, we estimated the insolvent trading claim is to be **\$135,405**.

Creditor	Estimated amount (\$)
ATO	111,105
Rai Bottling	21,000
Real Groovy Entertainment	3,300
<b>Total</b>	<b>135,405</b>

**b) Defences**

There are several defences available to a director pursuant to section 588FGB of the Act include:

- if it is provided that, at the payment time, the person had reasonable grounds to expect, and did expect, that the company was solvent at that time and would remain solvent if the payment was made.

- had reasonable grounds to believe, and did believe:
  - that a competent and reliable person (*the other person*) was responsible for providing to the first-mentioned person adequate information about whether the company was solvent; and
  - that the other person was fulfilling that responsibility.
- expected, on the basis of information provided to the first-mentioned person by the other person, that the company was solvent at that time and would remain solvent even if it made the payment.
- because of illness or for some other good reason, the person did not take part in the management of the company at the payment time.
- the person took all reasonable steps to prevent the company from making the payment; or there were no such steps the person could have taken.

When making our assessment of the Company's insolvency we would also consider the common law principles, some of which include:

- Whether or not a company is insolvent for the purposes of the Corporations Act, ss95A, 459B, 588FC or 588G(1)(b) is a question of fact to be ascertained from the consideration of the company's financial position taken as a whole.
- In considering the company's financial position, the court must have regard to the commercial realities. Commercial realities will be relevant in considering what resources are available to the company to meet its liabilities as they fall due, whether the resources other than cash are realisable by sale or borrowing upon security, and when such realisation are achievable.
- The conclusion of insolvency ought to be clear from a consideration of the debtor's financial position in its entirety and generally speaking ought not to be drawn simply from evidence of temporary lack of liquidity. It is the debtor's inability, utilising such cash resources as he has or can command through the use of his/her assets, to meet his/her debts as they fall due which indicates insolvency.

After examining the financial information and the Company's background, the Directors may have the following defences to an insolvent trading claim:

- The Directors injected funds to the Company and obtained third party funding since FY15;
- Mr Jang is and continues to defend the Company's position in relation to the ongoing litigation with the ATO and engaged lawyers during FY15-FY21;
- Ms Jang is currently suffering from personal health issues and is not in a position to be able to make decisions on behalf of the Company.

Our investigations indicate the Directors are not owners of any real property or any other assets. Considering the above defences that would be available to them, it is in our opinion, that it is not commercial to pursue insolvent trading claim if a liquidator is to be appointed.

For general information about insolvent trading, please refer to the Creditor Information Sheet – S439A reports contained within the Code of Professional Conduct on the ARITA website at [www.arita.com.au](http://www.arita.com.au).

### 10.3. Directors' Personal Financial Position

If the Company is wound up at the Second Meeting of Creditor further investigations may be conducted into the prospects of a successful actions against the Director and the cost benefits of pursuing such actions.

Personal names extract from the ASIC database indicates the following recent directorships:

#### Gu Ja Jang

Company Name	Position	Start Date	End Date
Divas Beverages(Wholesale) Pty Ltd	Director & Secretary	15/08/2021	12/01/2022
Divas Beverages(Wholesale) Pty Ltd	Director & Secretary	14/02/2022	4/03/2022
Divas Beverages(Wholesale) Pty Ltd	Director & Secretary	31/05/2022	13/09/2022

#### Jae Jang

Company Name	Position	Start Date
Divas Beverages (Wholesale) Pty Ltd	Director & Secretary	13/09/2022
Divas Beverages Australia Limited	Director	25/05/2021
Minks Estate Pty Ltd	Director & Secretary	27/08/2021
Minks Music Pty Ltd	Director & Secretary	19/05/2021

Search revealed that Ms Gu Ja Jang currently does not holds shareholding in any entity and Mr Jae Jang currently holds shareholding in the following entities:

Jae Jang	Shares	Beneficially Held	Beneficially Paid
Divas Beverages (Wholesale) Pty Ltd	100 Ordinary	Yes	Yes
Systematic Building Pty Ltd	1 Founders Shares	Yes	Yes
Minks Music Pty Ltd	100 Ordinary	Yes	Yes

Property search confirms the Directors do not own any property.

### 10.4. Breach of Directors' Duties

Section 180 to 184 of the Act sets out duties and powers of directors and officers of a company to enable directors to act in the interest of a company. The duties include:

- Section 180 – Care and Diligence (Civil obligations)
- Section 181 – Good Faith (Civil obligations)
- Section 182 – Use of Position (Civil obligations)
- Section 183 – Use of Information (Civil obligations)
- Section 184 – Good faith, use of position and use of information (Criminal offences)

Based on our investigations to date, we have not identified any breaches of director duties. Should a liquidator be appointed, further investigations would need to be conducted in relation to this matter.

## 11. ADMINISTRATORS' OPINION

Section 439A requires Administrators to provide their opinion on which of the three (3) alternative courses of action available to creditors, is in their interests.

It is the Administrators' opinion in relation to the Company that:

- It **would not** be in the creditors' best interest to resolve **to end the administration** at the second meeting of creditors as the Company is insolvent and is unlikely to return to solvency.
- It **would** be in the creditors' best interest to resolve that the Company execute a Deed of Company Arrangement ("DoCA") for the following reasons:
  - The proposed DoCA provides a greater return to the unsecured creditors of the Company than a Liquidation.
  - The proposed DoCA provides a more certain return to priority and unsecured creditors of the Company than a Liquidation.
  - The proposed DoCA will cost less to administer than a Liquidation.
- It **would not** be in the creditors' best interests for the Company to be wound up for the following reasons:
  - It would provide a smaller return (if any) to priority creditors of the Company compared with the proposed DoCA.
  - The prospect of a return to creditors of the Company is uncertain and reliant on related party debtor and voidable transaction recoveries, which are uncertain.
  - The costs of a Liquidation will be greater than the proposed DoCA, due to the costs associated with pursuing recoveries.

See **Annexure A** as our formal statement of opinion.

## 12. SECOND MEETING OF CREDITORS

The Second Meeting of Creditors is to be held virtually and at the offices of HoganSprowles at Level 9, 60 Pitt Street, Sydney NSW on Tuesday, 13 December 2022 at 11:00am.

The purpose of the Second Meeting of Creditors is to discuss the Company's affairs and to determine the Company's future. Creditors' options are as follows:

- That the Administration should end.
- The Company executes a Deed of Company Arrangement.
- That the Company be wound up.

Creditors may adjourn the meeting for up to forty-five (45) business days.

Creditors will also be asked whether they wish to replace the incumbent Administrators with a new liquidator or deed administrator (as applicable).

In respect of the meeting please find enclosed the following at **Annexure B**:

- Form 529 – Notice of Meeting and Agenda
- Form 532 – Appointment of Proxy
- Form 535 – Proof of Debt Form

In order to receive this report and any future reports and/or notices via email or facsimile, rather than by regular post, please provide your contact details on the enclosed Proof of Debt form.

Telephone facilities will be available.

### 13. CONDUCT OF THE ADMINISTRATION

We have attended to the following matters:

- Issued notices of appointment;
- Met with Mr Jang to understand the background and financial position of the Company;
- Attended to statutory duties including notifying ASIC, the ATO and other relevant authorities of their appointment and advertising their appointment;
- Organising access to Xero for investigation;
- Convened the first meeting of creditors held on 22 November 2022;
- Attended and chaired the first meeting of creditors;
- Undertook personal property securities register and property searches;
- Conducted a preliminary review of the books and records made available, to ascertain the Company's financial position, the key issues affecting the Company and transactions potentially recoverable by a liquidator;
- Liaised with stakeholders, including the accountant and creditors of the Company;
- Answered unsecured creditors' enquiries in relation to the Administration;

- Conducting preliminary investigations in relation to the business, affairs and financial circumstances of the Company; and
- Prepared a detailed report to creditors pursuant to Section 439A of the Act.

## 14. REMUNERATION

### 14.1. Voluntary Administration

At the meeting of creditors to be held on Tuesday, 13 December 2022, pursuant to Section 449E of the Act, the Administrators will seek creditor approval for the fee's set out in the remuneration report, which is attached as **Annexure F**.

At the meeting, creditors will be asked to consider the following resolutions:

*“That the remuneration of the Administrators, their partners and staff, for the period of the administration from 10 November 2022 to 5 December 2022 is fixed at a sum equal to the cost of time spent by the Administrators and the Administrators’ partners and staff, calculated at the hourly rates as detailed in the report to creditors dated 5 December 2022 of fees equalling \$30,000 plus GST, and that the Administrators can draw the remuneration immediately or as required.”*

*“That the future remuneration of the Administrators, their partners and staff, calculated at the hourly rates as detailed in the report to creditors dated 5 December 2022, for the period of the administration from 6 December 2022 to 13 December 2022, is fixed and approved to a maximum cap of \$3,000 plus GST, and can be drawn as soon as practicable after the conclusion of the second meeting. Should a lesser amount be incurred, only the lesser amount will be drawn. Should a greater amount be incurred, further approval from creditors may be sought.”*

*“That the future remuneration of the Administrators, their partners and staff, calculated at the hourly rates as detailed in the report to creditors dated 5 December 2022, for the period of the administration from 14 December 2022 to the conclusion of the administration, is fixed and approved to a maximum cap of \$2,000 plus GST, and can be drawn as soon as practicable after the conclusion of the second meeting. Should a lesser amount be incurred, only the lesser amount will be drawn. Should a greater amount be incurred, further approval from creditors may be sought.”*

*“That the internal disbursements of the Administrators for the period 10 November 2022 to the conclusion of the Administration at the rates outlined in the Remuneration Approval Report dated 5 December 2022 be capped at the amount of \$1,000 plus GST and can be drawn by the Administrators as required.”*

A copy of the information sheet ‘Approving Fees: a guide for creditors’ can be found on the ASIC website at [www.asic.gov.au](http://www.asic.gov.au).

### 14.2. Deed of Company Arrangement

If the Company enters into a Deed of Company Arrangement, approval of the Deed Administrator’s future fees will be sought in accordance with the remuneration report attached as

**Annexure F.** A summary of the tasks to be completed by the Deed Administrators and their staff in the conduct of the deed for the period upon signing of the deed to the completion is also outlined in the **Remuneration Report**.

At the meeting, creditors will be asked to consider the following resolutions:

*“That the remuneration of the Deed Administrators, their partners and staff, calculated at the hourly rates as detailed in the report to creditors dated 5 December 2022, for the period from commencement of the Deed of Company Arrangement to completion of the Deed of Company Arrangement, is fixed and approved to a maximum cap of \$10,000 plus GST, to be drawn only when incurred on a monthly basis or as required. Should a lesser amount be incurred, only the lesser amount will be drawn. Should a greater amount be incurred, further approval from creditors may be sought.”*

*“That the internal disbursements of the Deed Administrators for the period from the commencement of the Deed of Company Arrangement to the conclusion of the Deed of Company Arrangement at the rates outlined in the Remuneration Approval Report 5 December 2022 be capped at the amount of \$1,000 plus GST and can be drawn by the Deed Administrators as required.”*

### 14.3. Liquidation

If the Company is placed into liquidation, approval of the Liquidator’s future fees will be sought in accordance with the remuneration report attached as **Annexure F**. A summary of the tasks to be completed by the Liquidators and their staff in the conduct of the liquidation for the period of commencement to the completion of the liquidation is also outlined in the **Remuneration Report**.

At the meeting, creditors will be asked to consider the following resolutions:

*“That the remuneration of the Liquidators, their partners and staff, calculated at the hourly rates as detailed in the report to creditors dated 5 December 2022, for the period from the commencement of the liquidation to completion of the liquidation, is fixed and approved to a maximum cap of \$50,000 plus GST, to be drawn only when incurred on a monthly basis or as required. Should a lesser amount be incurred, only the lesser amount will be drawn. Should a greater amount be incurred, further approval from creditors may be sought.”*

*“That the internal disbursements of the Liquidators for the period from the commencement of the liquidation to the conclusion of the liquidation at the rates outlined in the Remuneration Approval Report dated 5 December 2022 be capped at the amount of \$2,000 plus GST and can be drawn by the Liquidators as required.”*

DATED this 5th day of December 2022



**Brendan Copeland**  
Joint & Several Administrator

**Divas Beverages Holdings Ltd  
(Administrators Appointed)  
A.C.N. 162 482 680**

**STATEMENT OF ADMINISTRATORS'S OPINION  
PURSUANT TO SECTION 439A(4)(b) OF THE CORPORATIONS ACT**

This statement sets out our opinions in relation to the alternatives which the creditors of the Company will consider at the Second Meeting of Creditors to be held at **the offices of HoganSproles at Level 9, 60 Pitt Street, Sydney NSW on Tuesday, 13 December 2022 at 11:00AM.**

- It **would not** be in the creditors' best interest to resolve **to end the administration** at the second meeting of creditors as the Company is insolvent and is unlikely to return to solvency.
- It **would** be in the creditors' best interest to resolve that the Company execute a Deed of Company Arrangement ("DoCA") for the following reasons:
  - The proposed DoCA provides a greater return to the unsecured creditors of the Company than a Liquidation.
  - The proposed DoCA provides a more certain return to priority and unsecured creditors of the Company than a Liquidation.
  - The proposed DoCA will cost less to administer than a Liquidation.
- It **would not** be in the creditors' best interests for the Company to be wound up for the following reasons:
  - It would provide a smaller return (if any) to priority creditors of the Company compared with the proposed DoCA.
  - The prospect of a return to creditors of the Company is uncertain and reliant on related party debtor and voidable transaction recoveries, which are uncertain.
  - The costs of a Liquidation will be greater than the proposed DoCA, due to the costs associated with pursuing recoveries.

Dated this **5th day of December 2022**



**Brendan Copeland**  
Joint & Several Administrator



Annexure B

FORM 529

CORPORATIONS ACT 2001  
Section 439A  
Insolvency Practice Rules (Corporations)  
75-10, 75-15 & 75-20

NOTICE OF SECOND MEETING OF CREDITORS

**Divas Beverages Holdings Ltd  
(Administrators Appointed)  
A.C.N. 162 482 680  
("the Company")**

NOTICE IS GIVEN that concurrent meeting of the creditors of the Company will be held at **the offices of HoganSprowles at Level 9, 60 Pitt Street, Sydney NSW on Tuesday, 13 December 2022 at 11:00AM.**

AGENDA

1. To review the Administrators' report concerning the companies' business, property, affairs and financial circumstances.
2. For creditors to consider the options available and to resolve either:
  - a) that the administration should end; or
  - b) that the company execute a Deed of Company Arrangement; or
  - c) that the company be wound up.
3. For creditors to:
  - a) approve the Voluntary Administrators' remuneration; and
  - b) determine the remuneration of the Deed Administrator/Liquidator, if one is appointed.
4. For creditors to consider the appointment of an alternative Deed Administrator or Liquidator.
5. If the Company is wound up, to consider the appointment of a Committee of Inspection.
6. If the Company is wound up, to consider the early destruction of the books and records at the conclusion of the liquidation.
7. To consider any other business that may be brought before the meeting.

Telephone conference facilities will be available at the meeting. Please note that under Insolvency Practice Rules (Corporations) (IPR) 75-35:

- a) A person, or the proxy or attorney of a person, who wishes to participate in the meeting by telephone must give to the convener, not later than the second last working day before the day on which the meeting is to be held, written statement setting out:
  - (i) the name of the person and of the proxy or attorney (if any); and

- (ii) an address to which notices to the person, proxy or attorney may be sent; and
  - (iii) a method by which the person, proxy or attorney may be contacted for the purposes of the meeting.
- b) A person, or the proxy or attorney of a person, who participates in the meeting by telephone must pay any costs incurred by the person, proxy or attorney in participating and is not entitled to be reimbursed for those costs from the assets of the Company.

Proxies to be used at the meeting should be given to me as Joint and Several Administrator and to the person named as convening the meeting. A creditor can only be represented by proxy or by an attorney pursuant to IPR 75-150 & 75-155 and if a body corporate by a representative appointed pursuant to Section 250D.

Creditors will not be entitled to vote at this meeting unless they have previously lodged particulars of their claim against the Company in accordance with IPR 75-85 and that claim has been admitted for voting purposes wholly or in part by the Joint and Several Administrators.

Dated this **5th day of December 2022**



**Brendan Copeland**  
Joint & Several Administrator

HoganSprowles Pty Ltd  
Level 9, 60 Pitt Street  
Sydney NSW 2000.

FORM 535  
 CORPORATIONS ACT 2001

ACN 162 482 680

Sub regulation 5.6.49(2)

**FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)**

To the Joint and Several Administrators Divas Beverages Holdings Ltd (Administrators Appointed):

1. This is to state that the company was, on 10 November 2022<sup>(1)</sup> and still is, justly and truly indebted to<sup>(2)</sup> (full name):  
 .....  
 ('Creditor')  
 .....  
 of (full address)  
 .....  
 for \$..... dollars and.....cents.

Particulars of the debt are:

Date	Consideration <sup>(3)</sup> state how the debt arose	Amount \$	GST included \$	Remarks <sup>(4)</sup> include details of voucher substantiating payment

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any manner of satisfaction or security for the sum or any part of it except for the following:  
 Insert particulars of all securities held. Where the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, specify them in a schedule in the following form:

Date	Drawer	Acceptor	Amount \$ c	Due Date

- I am **not** a related creditor of the Company <sup>(5)</sup>
- I am a related creditor of the Company <sup>(5)</sup>  
 relationship: \_\_\_\_\_

- 3A.<sup>(6)\*</sup> I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.
- 3B.<sup>(6)\*</sup> I am the creditor's agent authorised to make this statement in writing. I know that the debt was incurred and for the consideration stated and that the debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

DATED this                      day of                      2022

Signature of Signatory  
 .....  
 NAME IN BLOCK LETTERS  
 .....  
 Occupation  
 .....  
 Address  
 .....

**See Directions overleaf for the completion of this form**

**OFFICE USE ONLY**

POD No:		ADMIT (Voting / Dividend) - Ordinary	\$
Date Received:	/ /	ADMIT (Voting / Dividend) – Preferential	\$
Entered into CORE IPS:		Reject (Voting / Dividend)	\$
Amount per CRA/RATA	\$	Object or H/Over for Consideration	\$
<b>Reason for Admitting / Rejection</b>			
PREP BY/AUTHORISED		<b>TOTAL PROOF</b>	\$
DATE AUTHORISED	/ /		

**Proof of Debt Form Directions**

- \* Strike out whichever is inapplicable.
- (1) Insert date of Court Order in winding up by the Court, or date of resolution to wind up, if a voluntary winding up.
- (2) Insert full name and address (including ABN) of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor.
- (3) Under "Consideration" state how the debt arose, for example "goods sold and delivered to the company between the dates of .....", "moneys advanced in respect of the Bill of Exchange".
- (4) Under "Remarks" include details of vouchers substantiating payment.
- (5) Related Party / Entity: Director, relative of Director, related company, beneficiary of a related trust.
- (6) If the Creditor is a natural person and this proof is made by the Creditor personally. In other cases, if, for example, you are the director of a corporate Creditor or the solicitor or accountant of the Creditor, you sign this form as the Creditor's authorised agent (delete item 3A). If you are an authorised employee of the Creditor (credit manager etc), delete item 3B.

**Annexures**

- A. If space provided for a particular purpose in a form is insufficient to contain all the required information in relation to a particular item, the information must be set out in an annexure.
- B. An annexure to a form must:
  - (a) have an identifying mark;
  - (b) and be endorsed with the words:
    - i) "This is the annexure of *(insert number of pages)* pages marked *(insert an identifying mark)* referred to in the *(insert description of form)* signed by me/us and dated *(insert date of signing)*; and
  - (c) be signed by each person signing the form to which the document is annexed.
- C. The pages in an annexure must be numbered consecutively.
- D. If a form has a document annexed the following particulars of the annexure must be written on the form:
  - (a) the identifying mark; and
  - (b) the number of pages.
- E. A reference to an annexure includes a document that is with a form.

APPOINTMENT OF PROXY  
 CREDITORS MEETING

**Divas Beverages Holdings Ltd  
 (Administrators Appointed)  
 A.C.N. 162 482 680**

*I/*We <sup>(1)</sup>	
Of (address)	
being a creditor of the Company, appoint <sup>(2)</sup> or in his or her absence	
to vote for me/us on my/our behalf at the meeting of creditors to be held on 13 December 2022 or at any adjournment of that meeting.	

Please mark any boxes with an  X

Proxy Type:  General  Special

	For	Against	Abstain
<b>Resolution 1</b> A resolution that the Administration end.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Resolution 2</b> A resolution that the company be required to execute a Deed of Company Arrangement.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Resolution 3</b> A resolution that the Company be wound up.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Resolution 4</b> That in the event that the Company is wound up and an alternate Liquidator is proposed, that the existing Liquidators be replaced and (Alternative Appointee) be appointed in their stead.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Resolution 5</b> That the remuneration of the Administrators, their partners and staff, for the period of the administration from 10 November 2022 to 5 December 2022 is fixed at a sum equal to the cost of time spent by the Administrators and the Administrators' partners and staff, calculated at the hourly rates as detailed in the report to creditors of 5 December 2022 of fees equalling \$30,000 plus GST, and that the Administrators can draw the remuneration immediately or as required.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<p><b>Resolution 6</b>                  That the future remuneration of the Administrators, their partners and staff, for the period of the administration from 6 December 2022 to 13 December 2022 is fixed at a sum equal to the cost of time spent by the Administrators and the Administrators' partners and staff, calculated at the hourly rates as detailed in the report to creditors of 5 December 2022 of fees equalling \$3,000 plus GST, and that the Administrators can draw the remuneration immediately or as required.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Resolution 7</b>                  That the future remuneration of the Administrators, their partners and staff, calculated at the hourly rates as detailed in the report to creditors dated 5 December 2022, for the period 14 December 2022 to the conclusion of the administration, is fixed and approved to a maximum cap of \$2,000 plus GST, and can be drawn as soon as practicable after the conclusion of the second meeting. Should a lesser amount be incurred, only the lesser amount will be drawn. Should a greater amount be incurred, further approval from creditors may be sought.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Resolution 8</b>                  That the remuneration of the Deed Administrators, their partners and staff, calculated at the hourly rates as detailed in the report to creditors dated 5 December 2022, for the period from commencement of the Deed of Company Arrangement to completion of the Deed of Company Arrangement, is fixed and approved to a maximum cap of \$10,000 plus GST, to be drawn only when incurred on a monthly basis or as required. Should a lesser amount be incurred, only the lesser amount will be drawn. Should a greater amount be incurred, further approval from creditors may be sought.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Resolution 9</b>                  That the remuneration of the Liquidators, their partners and staff, calculated at the hourly rates as detailed in the report to creditors dated 5 December 2022, for the period from commencement of the liquidation to completion of the liquidation, is fixed and approved to a maximum cap of \$50,000 plus GST, to be drawn only when incurred on a monthly basis or as required. Should a lesser amount be incurred, only the lesser amount will be drawn. Should a greater amount be incurred, further approval from creditors may be sought.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Resolution 10</b>                  That the internal disbursements of the Administrators for the period 10 November 2022 to the conclusion of the Administration at the rates outlined in the report to creditors dated 5 December 2022 be capped at the amount of \$1,000 plus GST and can be drawn by the Administrators as required.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<p><b>Resolution 11</b>                  That the internal disbursements of the Deed Administrators for the period from the commencement of the Deed of Company Arrangement to the conclusion of the Deed of Company Arrangement at the rates outlined in the report to creditors dated 5 December 2022 be capped at the amount of \$1,000 plus GST and can be drawn by the Deed Administrators as required.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Resolution 12</b>                  That the internal disbursements of the Liquidators for the period from the commencement of the liquidation to the conclusion of the liquidation at the rates outlined in the report to creditors dated 5 December 2022 be capped at the amount of \$2,000 plus GST and can be drawn by the Liquidators as required.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Resolution 13</b>                  A Resolution that a committee of inspection be appointed.                   I am prepared / not* prepared to sit on the Committee of Inspection</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Resolution 14</b>                  That subject to obtaining the approval of the Australian Securities and Investments Commission under Section 542(4) of the Corporations Act 2001, the books and records of the Company and of the liquidation be disposed of by the Liquidators six months after the dissolution of the Company or earlier at the discretion of the Australian Securities and Investments Commission.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Resolution 14</b>                  Adjourn the second meeting of creditors for up to 45 business days.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

\_\_\_\_\_  
 Signature

CERTIFICATE OF WITNESS

This certificate is to be completed only if the person giving the proxy is blind or incapable of writing. The signature of the creditor, contributory, debenture holder or member must not be witnessed by the person nominated as proxy.

I, ..... Of .....

certify that the above instrument appointing a proxy was completed by me in the presence of and at the request of the person appointing the proxy and read to him or her before he or she signed or marked the instrument.

Dated:

Signature of Witness:

Description:

Place of Residence:

\* Strike out if inapplicable

(1) If a firm, strike out "I" and set out the full name of the firm.  
 Insert the name, address and description of the person appoint

**Proposal for a Deed of Company Arrangement for Divas Beverages Holding Ltd  
(Administrators appointed) ACN 162 482 680 ("Company")**

**A. Background**

1. The Company previously produced wine products.
2. On 10 November 2022, Brendan Copeland and Christian Sprowles were appointed Voluntary Administrators of the Company (**Voluntary Administrators**).
3. The related company, Divas Beverages Australia Pty Ltd (**Deed Proponent**) and the Director Jae Jang, propose that the Company enters into a Deed of Company Arrangement (DOCA) which contains the key terms as set out in this proposal and other terms as may be agreed between the Deed Proponent and the Voluntary Administrators.

**B. Deed Fund**

4. A Deed Fund will be established under the DOCA which will be comprised of:
  - (a) \$470,000 to be paid to the Voluntary Administrators' nominated account by the Deed Proponents as follows:
    - (i) Eight (8) monthly instalments of \$50,000 commencing the 23<sup>rd</sup> of February 2023 after the execution of the DOCA; and
    - (ii) Final instalment of \$70,000.
  - (b) any trading profits of the Company from the appointment of the Voluntary Administrators to the execution of the DOCA;
  - (c) cash at bank in the administration account as at the date of execution of the DOCA; and
5. For the avoidance of doubt, the Deed Fund will not include any pre-appointment debtors of the Company.

**C. Related Parties**

6. The following associated and/or related entities of the Company will agree not to prove in the DOCA:
  - (a) the Director;
  - (b) Gu Jang;
  - (c) Divas Beverages Australia Limited;
  - (d) Divas Beverages(Wholesale) Pty Ltd; and
  - (e) Minks Music Pty Ltd(**Deferred Creditors**).
7. The Deferred Creditors will agree to forbear from enforcing their claims against the Company as at the date of the appointment of the Voluntary Administrators until the later of:



- (a) 12 months' from effectuation of the DOCA; or
  - (b) the Company has sufficient assets available to pay its debts as and when they fall due and make repayments to the Deferred Creditors,
- unless the DOCA is terminated otherwise than by effectuation.

8. For the avoidance of doubt, the Deferred Creditors are otherwise entitled to vote at any subsequent meeting of creditors of the Company and prove against the Company in liquidation.

**D. Deed Administrators and the Deed Fund**

9. The Voluntary Administrators will become the Administrators of the DOCA, (**Deed Administrators**).
10. Control of the Company will revert to the Director immediately upon execution of the DOCA.
11. In the period between control of the Company reverting to the Director and effectuation of the DOCA, the Director:
- (a) must provide upon request the management accounts to the Deed Administrators, ensure all tax lodgements are made on time and provide copies of those tax lodgements to the Deed Administrators; and
  - (b) must not (without the prior written consent of the Deed Administrators), other than in the ordinary course of business, sell, transfer, encumber or otherwise dispose of any assets, business and/or undertaking of the Company.
12. The Deed Fund shall be administered by the Deed Administrators and distributed pursuant to the terms of the DOCA, which must provide for the following order and priority of payments:
- (a) firstly, in payment of the Voluntary Administrators' costs, charges and expenses (including their remuneration);
  - (b) next, in payment of the Deed Administrators' costs, charges and expenses (including their remuneration);
  - (c) next, in payment of superannuation at the rate of 100 cents in the dollar;
  - (d) next in payment of unpaid salary, annual leave or other entitlements of employees of the Company; and
  - (e) finally, payment of a pari passu dividend to the Company's participating unsecured creditors.
13. All participating creditors (excluding the Deferred Creditors) will be required to prove their debts as if the Company was in liquidation and the *Corporations Act 2001* (Cth) shall apply accordingly.
14. The DOCA will contain all relevant provisions of Schedule 8A of the *Corporations Regulations*, except where inconsistent with the express terms of the DOCA,

15. The DOCA will otherwise terminate once the Deed Administrators declare that it has been wholly effectuated.

**Moratorium and creditors to accept dividend**

16. All claims by creditors of the Company shall be subject to a moratorium during the term of the DOCA.
17. All creditors of the Company (excluding the Deferred Creditors) must accept their distribution from the Deed Fund as specified above in full and final settlement of all debts payable by, and all claims against, the Company and all actions in respect of such debts and/or claims against the Company shall be barred.
18. On payment of their entitlements under the DOCA, the creditors' claims (excluding those of the Deferred Creditors) are released in full and extinguished.

**Documentation**

19. A deed reflecting the terms of this proposal and any other provision(s) agreed between the Directors and the Voluntary Administrators must be entered into. No binding arrangement or agreement between the parties shall exist until such time as documentation is finalised and executed.
20. It shall be a condition precedent to the DOCA that the Deferred Creditors enter into appropriate deed(s) of deferral that provide they shall not prove against the Deed Fund established under the DOCA and/or enforce their claims against the Company as set out in paragraph 8 above.
21. The director undertakes to lodge all taxation lodgements up to the date of the administration.



ASIC

Australian Securities & Investments Commission

## Insolvency information for directors, employees, creditors and shareholders

ASIC has 11 insolvency information sheets to assist you if you're affected by a company's insolvency and have little or no knowledge of what's involved.

These plain language information sheets give directors, employees, creditors and shareholders a basic understanding of the three most common company insolvency procedures—liquidation, voluntary administration and receivership. There is an information sheet on the independence of external administrators and one that explains the process for approving the fees of external administrators. A glossary of commonly used insolvency terms is also provided.

The Insolvency Practitioners Association (IPA), the leading professional organisation in Australia for insolvency practitioners, endorses these publications and encourages its members to make their availability known to affected people.

### List of information sheets

- INFO 41 *Insolvency: a glossary of terms*
- INFO 74 *Voluntary administration: a guide for creditors*
- INFO 75 *Voluntary administration: a guide for employees*
- INFO 45 *Liquidation: a guide for creditors*
- INFO 46 *Liquidation: a guide for employees*
- INFO 54 *Receivership: a guide for creditors*
- INFO 55 *Receivership: a guide for employees*
- INFO 43 *Insolvency: a guide for shareholders*
- INFO 42 *Insolvency: a guide for directors*
- INFO 84 *Independence of external administrators: a guide for creditors*
- INFO 85 *Approving fees: a guide for creditors*

### Getting copies of the information sheets

To get copies of the information sheets, visit ASIC's website at [www.asic.gov.au/insolvencyinfosheets](http://www.asic.gov.au/insolvencyinfosheets). The information sheets are also available from the IPA website at [www.ipaa.com.au](http://www.ipaa.com.au). The IPA website also contains the IPA's Code of Professional Practice for Insolvency Professionals, which applies to IPA members.

**Important note:** The information sheets contain a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. These documents may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances. You will need a qualified professional adviser to take into account your particular circumstances and to tell you how the law applies to you.

## Creditor Information Sheet

### Offences, Recoverable Transactions and Insolvent Trading



#### Offences

A summary of offences under the Corporations Act that may be identified by the administrator:

180	Failure by company officers to exercise a reasonable degree of care and diligence in the exercise of their powers and the discharge of their duties.
181	Failure to act in good faith.
182	Making improper use of their position as an officer or employee, to gain, directly or indirectly, an advantage.
183	Making improper use of information acquired by virtue of the officer's position.
184	Reckless or intentional dishonesty in failing to exercise duties in good faith for a proper purpose. Use of position or information dishonestly to gain advantage or cause detriment. This can be a criminal offence.
198G	Performing or exercising a function or power as an officer while a company is under administration.
206A	Contravening a court order against taking part in the management of a corporation.
206A, B	Taking part in the management of corporation while being an insolvent, for example, while bankrupt.
206A, B	Acting as a director or promoter or taking part in the management of a company within five years after conviction or imprisonment for various offences.
209(3)	Dishonest failure to observe requirements on making loans to directors or related companies.
254T	Paying dividends except out of profits.
286	Failure to keep proper accounting records.
312	Obstruction of an auditor.
314-7	Failure to comply with requirements for the preparation of financial statements.
437D(5)	Unauthorised dealing with company's property during administration.
438B(4)	Failure by directors to assist administrator, deliver records and provide information.
438C(5)	Failure to deliver up books and records to the administrator.
590	Failure to disclose property, concealed or removed property, concealed a debt due to the company, altered books of the company, fraudulently obtained credit on behalf of the company, material omission from Report as to Affairs or false representation to creditors.

#### Recoverable Transactions

##### Preferences

A preference is a transaction, such as a payment by the company to a creditor, in which the creditor receiving the payment is preferred over the general body of creditors. The relevant period for the payment commences six months before the commencement of the liquidation. The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

Where a creditor receives a preference, the payment is voidable as against a liquidator and is liable to be paid back to the liquidator subject to the creditor being able to successfully maintain any of the defences available to the creditor under the Corporations Act.

##### Uncommercial Transaction

An uncommercial transaction is one that it may be expected that a reasonable person in the company's circumstances would not have entered into, having regard to:

- the benefit or detriment to the company;
- the respective benefits to other parties; and,
- any other relevant matter.





To be voidable, an uncommercial transaction must have occurred during the two years before the liquidation. However, if a related entity is a party to the transaction, the period is four years and if the intention of the transaction is to defeat creditors, the period is ten years.

The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

### **Unfair Loan**

A loan is unfair if and only if the interest was extortionate when the loan was made or has since become extortionate. There is no time limit on unfair loans – they only must be entered into before the winding up began.

### **Arrangements to avoid employee entitlements**

If an employee suffers loss because a person (including a director) enters into an arrangement or transaction to avoid the payment of employee entitlements, the liquidator or the employee may seek to recover compensation from that person. It will only be necessary to satisfy the court that there was a breach on the balance of probabilities. There is no time limit on when the transaction occurred.

### **Unreasonable payments to directors**

Liquidators have the power to reclaim '*unreasonable payments*' made to directors by companies prior to liquidation. The provision relates to payments made to or on behalf of a director or close associate of a director. The transaction must have been unreasonable, and have been entered into during the 4 years leading up to a company's liquidation, regardless of its solvency at the time the transaction occurred.

### **Voidable charges**

Certain charges over company property are voidable by a liquidator:

- circulating security interest created within six months of the liquidation, unless it secures a subsequent advance;
- unregistered security interests;
- security interests in favour of related parties who attempt to enforce the security within six months of its creation.

## **Insolvent trading**

In the following circumstances, directors may be personally liable for insolvent trading by the company:

- a person is a director at the time a company incurs a debt;
- the company is insolvent at the time of incurring the debt or becomes insolvent because of incurring the debt;
- at the time the debt was incurred, there were reasonable grounds to suspect that the company was insolvent;
- the director was aware such grounds for suspicion existed; and
- a reasonable person in a like position would have been so aware.

The law provides that the liquidator, and in certain circumstances the creditor who suffered the loss, may recover from the director, an amount equal to the loss or damage suffered. Similar provisions exist to pursue holding companies for debts incurred by their subsidiaries.

A defence is available under the law where the director can establish:

- there were reasonable grounds to expect that the company was solvent and they did so expect;
- they did not take part in management for illness or some other good reason; or
- they took all reasonable steps to prevent the company incurring the debt.

The proceeds of any recovery for insolvent trading by a liquidator are available for distribution to the unsecured creditors before the secured creditors.

**Important note:** This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances.

## Remuneration Report

**Divas Beverages Holdings Ltd  
(Administrators Appointed)  
A.C.N. 162 482 680**

This remuneration report provides you with the information you need to be able to make an informed decision regarding the approval of our remuneration for undertaking the Administration.

### Table of Contents

Part 1:	Declaration
Part 2:	Executive Summary
Part 3:	Description of work completed / to be completed
Part 4:	Calculation of Remuneration
Part 5:	Statement of Remuneration Claim
Part 6:	Remuneration Recoverable from External Sources
Part 7:	Likely impact on dividends
Part 8:	Disbursements
Part 9:	Report on Progress of the Administration
Part 10:	Summary of Receipts and Payments
Part 11:	Queries
Part 12:	Information Sheet

### Part 1: Declaration

Christian Sprowles and Brendan Copeland of HoganSprowles have undertaken a proper assessment of this remuneration claim for our appointment as Joint and Several Administrators of Divas Beverages Holdings Ltd (Administrators Appointed) in accordance with the law and applicable professional standards. We are satisfied that the remuneration claimed is in respect of necessary work, properly performed, or to be properly performed, in the conduct of the administration.

## Part 2: Executive Summary

To date, no remuneration has been approved and paid in the administration. This remuneration report details approval sought for the following fees:

	Amount ex GST (\$)
<b>Current remuneration approval sought:</b>	
<b>Voluntary Administration - Actual</b>	
<i>Resolution 5: 10 November 2022 to 5 December 2022</i>	30,000
<b>Voluntary Administration - Estimated</b>	
<i>Resolution 6: 6 December 2022 to 13 December 2022</i>	3,000
<i>Resolution 7: 14 December 2022 to completion</i>	2,000
<b>Total - Voluntary Administration</b>	<b>35,000</b>
<b>Deed of Company Arrangement</b>	
Resolution 8: from commencement to completion	10,000
<b>Total - Deed of Company Arrangement</b>	<b>10,000</b>
<b>Liquidation</b>	
Resolution 9: from commencement to completion	50,000
<b>Total - Liquidation</b>	<b>50,000</b>

Please refer to this report section for full details of the calculation and composition of the remuneration approval sought.

We note that the actual fees incurred for the period 10 November 2022 to 5 December 2022 are \$30,839.96 (excluding GST), however we have discounted our fees to \$30,000.00 for this period.

## Part 3: Description of work completed / to be completed

### Resolution 5 - Current Joint and Several Administrators' remuneration for the period 10 November 2022 to 5 December 2022

Task Area	General Description	Includes
Creditors  Number of hours: 35.1  Cost: \$16,949	Creditor Enquiries	Receive and follow up creditor enquiries via telephone. Maintaining creditor enquiry register. Review and prepare correspondence to creditors and their representatives via facsimile, email and post. Calls with creditors.

Task Area	General Description	Includes
	Creditor reports	Preparation of Initial notifications to creditors. Preparing 439A, investigation, meeting and general reports to creditors. Internal disbursements approval.
	Dealing with proofs of debt	Receipting and filing POD when not related to a dividend. Corresponding with OSR and ATO regarding POD when not related to a dividend.
	Meeting of Creditors	Preparation meeting notices, proxies and advertisements. Forward notice of meeting to all known creditors. Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting. Preparation & lodgement of minutes of meetings with ASIC. Respond to stakeholder queries and questions immediately following meeting.
	Tasks associated with DoCA	Review draft DoCA terms. Preparation of meeting to discuss deed proposal. Tasks associated with DoCA. Liaise with third parties regarding DoCA.
Investigation  Number of hours: 34.0  Cost: \$10,236	Conducting investigation	Collection of company books and records and Report as to Affairs. Reviewing company's books and records. Review and preparation of company nature and history. Reviewing insolvency claims. Conducting preliminary investigations into voidable transaction. Conducting and summarising statutory searches. Preparation of comparative financial statements. Preparation of deficiency statement. Review of specific transactions and liaising with directors regarding certain transactions. Liaising with directors regarding certain transactions. Preparation of investigation file. Review taxation reports and liabilities. Calculation of superannuation penalties and interest for ATO. Review related parties loan transactions. Follow up director and management regarding information. Prepared file memos on specific investigations/transactions.



Task Area	General Description	Includes
Administration  Number of hours: 14.3  Cost: \$3,655	Document maintenance/file review/checklist	First month, then 6 monthly administration review. Filing of documents. File reviews. Updating checklists.
	Insurance	Correspondence with Willis regarding initial and ongoing insurance requirements. Liaise with pre-appointment broker regarding policy.
	Bank account administration	Preparing correspondence opening and closing accounts. Requesting bank statements. Bank account reconciliations. Correspondence with bank regarding specific transfers.
	ASIC Form 524 and other forms	Preparing and lodging ASIC forms including 505, 524, 911 etc. Correspondence with ASIC regarding statutory forms.
	ATO and other statutory reporting	Notification of appointment. Correspondence with ATO regarding specific matters.
	Planning / Review	Discussions regarding status of administration.

**Resolution 6 - Future Joint and Several Administrators' remuneration for the period 6 December 2022 to 13 December 2022**

Task Area	General Description	Includes
<b>Creditors</b>  Number of hours: 5.5  Estimated Cost: \$2,318	Creditor Enquiries	Receive and follow up creditor enquiries via telephone. Maintaining creditor enquiry register. Review and prepare correspondence to creditors and their representatives via facsimile, email and post.
	Creditor reports	Preparing and reviewing 439A report.
	Dealing with proofs of debt	Receipting and filing POD when not related to a dividend. Corresponding with OSR and ATO regarding POD when not related to a dividend.

Task Area	General Description	Includes
	Meeting of Creditors	Preparation meeting notices, proxies and advertisements. Forward notice of meeting to all known creditors. Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting. Preparation & lodgement of minutes of meetings with ASIC.
	Tasks associated with DoCA	Review draft DoCA agreement. Preparation of meeting to discuss deed proposal Tasks associated with DoCA. Liaise with third parties regarding DoCA.
<b>Administration</b>  Number of hours: 2.5  Cost: \$850	Document maintenance/file review/checklist	Review of file. Filing of documents. File reviews. Updating checklists.
	Bank account administration	Requesting bank statements. Bank account reconciliations.
	Planning / Review	Discussions regarding status of administration.

**Resolution 7 - Future Joint and Several Administrators' remuneration for the period 14 December 2022 to the conclusion of the administration**

Task Area	General Description	Includes
<b>Creditors</b>  Number of hours: 2.5  Estimated Cost: \$1,088	Creditor Enquiries	Receive and follow up creditor enquiries via telephone. Maintaining creditor enquiry register. Review and prepare correspondence to creditors and their representatives via facsimile, email and post.
	Dealing with proofs of debt	Receipting and filing POD when not related to a dividend. Corresponding with OSR and ATO regarding POD when not related to a dividend.
	Meeting of Creditors	Preparation & lodgement of minutes of meetings with ASIC.
	Tasks associated with DoCA	Review draft DoCA agreement. Preparation of meeting to discuss deed proposal Tasks associated with DoCA. Liaise with third parties regarding DoCA.

Task Area	General Description	Includes
<b>Administration</b>  Number of hours: 3.0  Cost: \$1,030	Document maintenance/file review/checklist	Review of file. Filing of documents. File reviews. Updating checklists.
	Bank account administration	Requesting bank statements. Bank account reconciliations.
	Planning / Review	Discussions regarding status of administration.

**Resolution 8 – Deed Administrators’ remuneration for the period from commencement of the Deed of Company Arrangement to completion of the Deed of Company Arrangement**

Task Area	General Description	Includes
<b>Creditors</b>  Number of hours: 10.0  Estimated Cost: \$3,995	Creditor Enquiries	Receive and follow up creditor enquiries via telephone. Maintaining creditor enquiry register. Review and prepare correspondence to creditors and their representatives via facsimile, email and post. Correspondence with committee of inspection members.
	Creditor reports	Preparing investigation, meeting and general reports to creditors.
	Tasks associated with DoCA	Review draft DoCA agreement. Preparation of meeting to discuss deed proposal. Tasks associated with DoCA. Liaise with third parties regarding DoCA.
<b>Dividend</b>  Number of hours: 12.0  Estimated Cost: \$3,690	Processing proofs of debt	Preparation of correspondence to potential creditors inviting. Lodgement of POD. Receipt of PODs. Maintain POD register. Adjudicating POD. Request further information from claimants regarding POD. Preparation of correspondence to claimant advising outcome of adjudication.
	Dividend procedures	Preparation of correspondence to creditors advising of intention to declare dividend. Advertisement of intention to declare dividend. Obtain clearance from ATO to allow distribution of company’s assets. Preparation of dividend calculation. Preparation of correspondence to creditors announcing declaration of dividend. Advertise announcement of dividend. Preparation of distribution. Preparation of dividend file.

Task Area	General Description	Includes
		Preparation of payment vouchers to pay dividend. Preparation of correspondence to creditors enclosing payment of dividend.
<b>Administration</b>  Number of hours: 11.0  Estimated Cost: \$3,015	Correspondence	With various stakeholders.
	Document maintenance/file review/checklist	First month, then 6 monthly administration review. Filing of documents. File reviews. Updating checklists.
	Bank account administration	Preparing correspondence opening and closing accounts. Requesting bank statements. Bank account reconciliations. Correspondence with bank regarding specific transfers.
	ASIC Form 524 and other forms	Preparing and lodging ASIC forms including 505, 524, 911 etc. Correspondence with ASIC regarding statutory forms.
	ATO & other statutory reporting	Notification of appointment. Preparing BAS. Completing payment summaries.
	Finalisation	Completing checklists. Finalising WIP.
	Planning / Review	Discussions regarding status of administration.
	Books and records / storage	Sending job files to storage.

**Resolution 9 –Liquidators’ remuneration for the period from commencement of the liquidation to completion of the liquidation**

Task Area	General Description	Includes
<b>Creditors</b>  Number of hours: 47.0  Estimated Cost: \$20,100	Creditor Enquiries	Receive and follow up creditor enquiries via telephone. Maintaining creditor enquiry register. Review and prepare correspondence to creditors and their representatives via facsimile, email and post. Correspondence with committee of inspection members.

Task Area	General Description	Includes
	Secured creditor reporting	Preparing reports to secured creditor Responding to secured creditor's queries.
	Creditor reports	Preparing 439A, investigation, meeting and general reports to creditors. Internal disbursements approval. Preparation of Initial notifications to creditors.
	Dealing with proofs of debt	Receipting and filing POD when not related to a dividend. Corresponding with OSR and ATO regarding POD when not related to a dividend.
	Meeting of Creditors	Preparation meeting notices, proxies and advertisements. Forward notice of meeting to all known creditors. Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting. Preparation and lodgement minutes of meetings with ASIC. Respond to stakeholder queries and questions immediately following meeting.
<b>Investigation</b>  Number of hours: 57.0  Estimated Cost: \$22,410	Conducting investigation	Collection of company books and records. Reviewing company's books and records Review and preparation of company nature and history. Conducting and summarising statutory searches. Preparation of comparative financial statements. Preparation of deficiency statement Review of specific transactions and liaising with directors regarding certain transactions. Liaising with directors regarding certain transactions. Preparation of investigation file. Lodgement of investigation with the ASIC. Preparation and lodgement of supplementary report if required.
	Examinations	Preparing brief to solicitor. Liaising with solicitor(s) regarding examinations. Attendance at examination. Reviewing examination transcripts. Liaising with solicitor(s) regarding outcome of examinations and further actions available.

Task Area	General Description	Includes
	Litigation / Recoveries	Internal meetings to discuss status of litigation. Preparing brief to solicitors. Liaising with solicitors regarding recovery actions. Attending to negotiations. Attending to settlement matters.
	ASIC reporting	Preparing statutory investigation reports. Preparing affidavits seeking non lodgements assistance. Liaising with ASIC.
	Correspondence	With various stakeholders.
<b>Administration</b>  Number of hours: 26.0  Estimated Cost: \$8,365	Document maintenance/file review/checklist	First month, then 6 monthly administration review. Filing of documents. File reviews. Updating checklists.
	Insurance	Correspondence with Willis regarding initial and ongoing insurance requirements. Correspondence with previous brokers.
	Bank account administration	Preparing correspondence opening and closing accounts. Requesting bank statements. Bank account reconciliations. Correspondence with bank regarding specific transfers.
	ASIC Form 524 and other forms	Preparing and lodging ASIC forms including 505, 524, 911 etc. Correspondence with ASIC regarding statutory forms.
	ATO & other statutory reporting	Notification of appointment. Preparing BAS. Completing payment summaries.
	Finalisation	Notifying ATO of finalisation. Cancelling ABN / GST / PAYG registration. Completing checklists. Finalising WIP.
	Planning / Review	Discussions regarding status of administration.
	Books and records / storage	Dealing with records in storage . Sending job files to storage.

#### Part 4: Calculation of Remuneration

##### Resolution 5 – Current Joint and Several Administrators’ remuneration for the period 10 November 2022 to 5 December 2022

Employee	Position	\$/hour	Total actual hours	Total (\$)	Task Area					
					Creditors hrs	\$	Investigation hrs	\$	Administration hrs	\$
Brendan Copeland	Partner	595.0	17.0	10,115	12.4	7,378	3.0	1,785	1.6	952
Anny Ngo	Director	550.0	18.3	10,065	13.3	7,315	3.3	1,815	1.7	935
Christine Xiao	Analyst 2	240.0	40.8	9,780	9.4	2,256	27.7	6,636	3.7	888
Domnique Bui	Administration	120.0	7.3	880	0.0	0	0.0	0	7.3	880
Total			83.4	30,840	35.1	16,949	34.0	10,236	14.3	3,655
BUT SAY				30,000						
GST				3,000						
Total (Incl GST)				33,000						
Average hourly rate				370						

##### Resolution 6 – Future Joint and Several Administrators’ remuneration for the period 6 December 2022 to 13 December 2022

Employee	Position	\$/hour	Total actual hours	Total (\$)	Task Area			
					Creditors hrs	\$	Administration hrs	\$
Brendan Copeland	Partner	595.0	1.5	893	1.5	893	0.0	0
Anny Ngo	Director	550.0	2.5	1,375	1.5	825	1.0	550
Christine Xiao	Analyst 2	240.0	3.5	840	2.5	600	1.0	240
Dominique Bui	Administration	120.0	0.5	60	0.0	0	0.5	60
Total			8.0	3,168	5.5	2,318	2.5	850
BUT SAY				3,000				
GST				300				
Total (Incl GST)				3,300				
Average hourly rate				396				

**Resolution 7 – Future Joint and Several Administrators’ remuneration for the period 14 December to the conclusion of the administration**

Employee	Position	\$/hour	Total actual hours	Total (\$)	Task Area			
					Creditors hrs	\$	Administration hrs	\$
Brendan Copeland	Partner	595.0	0.5	298	0.5	298	0.0	0
Anny Ngo	Director	550.0	2.0	1,100	1.0	550	1.0	550
Christine Xiao	Analyst 2	240.0	3.0	720	1.0	240	2.0	480
Total			5.5	2,118	2.5	1,088	3.0	1,030
BUT SAY				2,000				
GST				200				
Total (Incl GST)				2,200				
Average hourly rate				385				

**Resolution 8 – Deed Administrators’ remuneration for the period from commencement of the Deed of Company Arrangement to completion of the Deed of Company Arrangement**

Employee	Position	\$/hour	Total actual hours	Total (\$)	Task Area					
					Creditors hrs	\$	Dividend hrs	\$	Administration hrs	\$
Brendan Copeland	Partner	595.0	2.0	1,190	1.0	595	0.0	0	1.0	595
Anny Ngo	Director	550.0	9.0	4,950	4.0	2,200	3.0	1650	2.0	1,100
Christine Xiao	Analyst 2	240.0	16.0	3,840	5.0	1,200	8.0	1920	3.0	720
Domnique Bui	Administration	120.0	6.0	720	0.0	0	1.0	120	5.0	600
Total			33.0	10,700	10.0	3,995	12.0	3,690	11.0	3,015
BUT SAY				10,000						
GST				1,000						
Total (Incl GST)				11,000						
Average hourly rate				324						



**Resolution 9 –Liquidators’ remuneration for the period from commencement of the liquidation to completion of the liquidation**

	Position	\$/hour	Total actual hours	Total (\$)	Task Area					
					Creditors hrs	\$	Investigation hrs	\$	Administration hrs	\$
Brendan Copeland	Partner	595.0	23.0	13,685	10.0	5,950	8.0	4,760	5.0	2,975
Anny Ngo	Director	550.0	41.0	22,550	17.0	9,350	19.0	10,450	5.0	2,750
Christine Xiao	Analyst 2	240.0	56.0	13,440	20.0	4,800	30.0	7,200	6.0	1,440
Domnique Bui	Administration	120.0	10.0	1,200	0.0	0	0.0	0	10.0	1,200
Total			130.0	50,875	47.0	20,100	57.0	22,410	26.0	8,365
BUT SAY				50,000						
GST				5,000						
Total (Incl GST)				55,000						
Average hourly rate				391						

## **Part 5: Statement of Remuneration Claim**

At the meeting of creditors convened for 13 December 2022 creditors will be asked to consider the following resolutions:

### ***Resolution 5 – Current Joint and Several Administrators’ remuneration for the period 10 November 2022 to 5 December 2022***

“That the remuneration of the Administrators, their partners and staff, for the period of the administration from 10 November 2022 to 5 December 2022 is fixed at a sum equal to the cost of time spent by the Administrators and the Administrators’ partners and staff, calculated at the hourly rates as detailed in the report to creditors dated 5 December 2022 of fees equalling \$30,000 plus GST, and that the Administrators can draw the remuneration immediately or as required.”

### ***Resolution 6 – Future Joint and Several Administrators’ remuneration for the period 6 December 2022 to 13 December 2022***

“That the future remuneration of the Administrators, their partners and staff, calculated at the hourly rates as detailed in the report to creditors dated 5 December 2022, for the period 6 December 2022 to 13 December 2022, is fixed and approved to a maximum cap of \$3,000 plus GST, and can be drawn as soon as practicable after the conclusion of the second meeting. Should a lesser amount be incurred, only the lesser amount will be drawn. Should a greater amount be incurred, further approval from creditors may be sought.”

### ***Resolution 7 – Future Joint and Several Administrators’ remuneration for the period 14 December 2022 to completion of administration***

“That the future remuneration of the Administrators, their partners and staff, calculated at the hourly rates as detailed in the report to creditors dated 5 December 2022, for the period 14 December 2022 to the conclusion of the administration, is fixed and approved to a maximum cap of \$2,000 plus GST, and can be drawn as soon as practicable after the conclusion of the second meeting. Should a lesser amount be incurred, only the lesser amount will be drawn. Should a greater amount be incurred, further approval from creditors may be sought.”

### ***Resolution 8 – Deed Administrators’ remuneration for the period from commencement of the Deed of Company Arrangement to completion of the Deed of Company Arrangement***

“That the remuneration of the Deed Administrators, their partners and staff, calculated at the hourly rates as detailed in the report to creditors of 5 December 2022, for the period from commencement of the Deed of Company Arrangement to completion of the Deed of Company Arrangement, is fixed and approved to a maximum cap of \$10,000 plus GST, to be drawn only when incurred on a monthly basis or as required. Should a lesser amount be incurred, only the lesser amount will be drawn. Should a greater amount be incurred, further approval from creditors may be sought.”

### ***Resolution 9 – Liquidators’ remuneration for the period from commencement of the liquidation to completion of the liquidation***

“That the remuneration of the Liquidators, their partners and staff, calculated at the hourly rates as detailed in the report to creditors dated 5 December 2022, for the period from commencement of the liquidation to completion of the liquidation, is fixed and approved to a maximum cap of \$50,000 plus GST, to be drawn only when incurred on a monthly basis or as required. Should a lesser amount be

incurred, only the lesser amount will be drawn. Should a greater amount be incurred, further approval from creditors may be sought.”

Creditors have not previously approved any remuneration of the Administrators.

#### **Part 6: Remuneration Recoverable from External Sources**

The Administrators have not received, and are not entitled to receive, any funding from external sources in respect of remuneration.

#### **Part 7: Likely impact on dividends**

It is both reasonable and appropriate for a professional service provider to be remunerated for their services. Administrators, Deed Administrators and Liquidators are entitled to be remunerated for necessary work that is reasonably performed. That work is also the source of any funds that may be recovered for the benefit of creditors and other stakeholders.

The impact of the approval of the administrator’s remuneration is that the remuneration will be paid to the external administrators if sufficient funds are generated to enable it to be paid. The remuneration will be paid from those funds that are generated prior to the payment of most other stakeholders. It is noted that no funds would be available for any stakeholder without the work necessarily undertaken by the external administrators.

#### **Part 8: Disbursements**

Disbursements are divided into three types:

- Externally provided professional services - these are recovered at cost. An example of an externally provided professional service disbursement is legal fees.
- Externally provided non-professional costs such as travel, accommodation and search fees - these are recovered at cost.
- Internal disbursements such as photocopying, printing and postage. These disbursements, if charged to the Administration, would generally be charged at cost; though some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups both variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis.

We have undertaken a proper assessment of disbursements claimed in the administration, in accordance with the law and applicable professional standards. We are satisfied that the disbursements claimed are necessary and proper. To date no disbursements have been paid in the administration.

Disbursements provided by our firm will be charged to the administration on the following basis:

Disbursements	Rate ex GST (\$)
Externally provided professional services	At cost
Externally provided non-professional services	At cost
Internal disbursements:	
Advertising	At cost
Search fees	At cost
Courier	At cost
Printing, Faxes & Photocopies	\$0.20 per page

Postage	At cost
Stationary and other incidental disbursements	At cost
Travel - Staff by own vehicle	\$0.72 per km
Travel - other	At cost

Rates applicable for financial year ending 30 June 2023.

We will be seeking approval of the following resolutions to approve our internal disbursements.

**Resolution 9 - Joint and Several Administrators' disbursements**

*"That the internal disbursements of the Administrators for the period 10 November 2022 to the conclusion of the Administration at the rates outlined in the Remuneration Approval Report dated 5 December 2022 be capped at the amount of \$1,000 plus GST and can be drawn by the Administrators as required."*

**Resolution 10 - Deed Administrators' disbursements**

*"That the internal disbursements of the Deed Administrators for the period from the commencement of the Deed of Company Arrangement to the conclusion of the Deed of Company Arrangement at the rates outlined in the Remuneration Approval Report dated 5 December 2022 be capped at the amount of \$1,000 plus GST and can be drawn by the Deed Administrators as required."*

**Resolution 11 - Liquidators' disbursements**

*"That the internal disbursements of the Liquidators for the period from the commencement of the liquidation to the conclusion of the liquidation at the rates outlined in the Remuneration Approval Report dated 5 December 2022 be capped at the amount of \$2,000 plus GST and can be drawn by the Liquidators as required."*

**Part 9: Report on Progress of the Administration**

Please see the Administrators' Report to Creditors dated 5 December 2022.

**Part 10: Summary of Receipts and Payments**

Please see the Administrators' Report to Creditors dated 5 December 2022.

**Part 11: Queries**

If you have any queries in relation to the information in this report, please contact Anny Ngo on (02) 8020 5853 or by email on [anny@hogansprowles.com.au](mailto:anny@hogansprowles.com.au). You can also access information which may assist you on the following websites:

- ARITA at [www.arita.com.au/creditors](http://www.arita.com.au/creditors); and
- ASIC at [www.asic.gov.au](http://www.asic.gov.au) (search for "insolvency information sheets").

**Part 12: Information Sheet**

The ASIC information sheet, Approving fees: A guide for creditors can be found at [http://download.asic.gov.au/media/1310767/Approving\\_fees\\_guide\\_for\\_creditors.pdf](http://download.asic.gov.au/media/1310767/Approving_fees_guide_for_creditors.pdf)

# hogan sprolles

Schedule of rates as @ 1 July 2022

Private & Confidential

Title	Description	Hourly rate (Excl. GST) (\$)
Partner	Registered liquidator, Chartered Accountant, degree qualified with more than fifteen years of extensive experience in insolvency, restructuring and business advisory matters. experience. Leads engagements with full accountability for strategy and execution.	595
Director	Generally Chartered Accountant and degree qualified with more than ten years of experience. Extensive experience in managing large, complex engagements at a senior level. Autonomously leads complex insolvency appointments reporting to Partner.	550
Senior Manager	Generally Chartered Accountant and degree qualified with more than seven years of experience. Significant experience across all types of engagements. Self-sufficiently conducts small to medium insolvency appointments.	500
Manager	Generally Chartered Accountant and degree qualified with more than five years of experience. Experience in complex matters, day to day conduct of small to medium engagements. Assists senior staff on complex matters.	450
Supervisor	Generally Chartered Accountant and degree qualified with more than three years of experience. Assists senior staff in planning and conduct of small to large engagements. Supervise a small team and control small engagements.	420
Senior Analyst 1	Generally degree qualified and undertaking Chartered Accountant's qualification. Controls certain tasks on small engagements and assists staff with completing tasks on medium to large engagements.	370
Senior Analyst 2	Experienced graduate controlling certain tasks on small engagements. Assists senior staff in completing tasks on small to large engagements.	360
Analyst 1	Experienced graduate. Required to assists senior staff in completing tasks on small to large engagements.	310
Analyst 2	Generally a university graduate with appropriate qualifications. Assists with day to day tasks under the supervision of senior staff.	240
Graduate	Generally degree qualified and undertaking or about to undertake Chartered Accountant's qualification with less than one year of experience. Assists with day to day tasks under the supervision of senior staff.	215
Undergraduate	Undertaking relevant degree. Assists with tasks within workstreams and appointments under supervision.	190
Senior Bookkeeper	Experienced bookkeeper with more than 18 months experience. Assist senior staff with accounting functions of engagement.	190
Bookkeeper	Assist senior staff with accounting functions of engagement.	170
PA	Appropriate skills and experience to support professional staff in an administrative capacity.	150
Administration	Appropriate skills and experience to support professional staff in an administrative capacity.	120